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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1945

No. 400

UTAH JUNK COMPANY, PETITIONER,

vs.

CHESTER BOWLES, PRICE ADMINISTRATOR

ON WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS

PETITION FOR CERTIORARI FILED SEPTEMBER 5, 1945.

CERTIORARI GRANTED NOVEMBER 5, 1945.

SUPREME COURT OF THE UNITED STATES

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[fol. 1]

IN THE UNITED STATES EMERGENCY COURT OF APPEALS

No. 184

UTAH-JUNK COMPANY, a Corporation, Complainant

v.

CHESTER BOWLES, Price Administrator, Respondent

Transcript of Proceedings Before the Price Administrator

Filed December 13, 1944

Before Office of Price Administration

Docket No. 1004-9-P

In the Matter of the Protest of Utah Junk Company Against the Application of the Provisions of Section 1304.13 of Revised Price Schedule No. 4 Establishing Maximum Prices for Sales of No. 1 and No. 2 Heavy Melting Steel to Sales of Smelting Fluxing Scrap

PROTEST FILED WITH THE SECRETARY OF THE OFFICE OF PRICE ADMINISTRATION ON AUGUST 7, 1944

Pursuant to Section 203 of the Emergency Price Control Act, as amended, and sub-part D of Revised Procedural Regulation No. 1, as amended, Utah Junk Company, a corporation of the State of Utah, protests against the application of the provisions of Section 1304.13 of Revised Price Schedule No. 4 establishing maximum prices for sales of No. 1 and No. 2 heavy melting steel to sales of smelting fluxing scrap made by protestant to United States Smelting, Refining & [fol. 2] Mining Company between the 25th day of April, 1942 and the 10th day of February, 1943 and requests the authority to charge for said fluxing scrap in accordance with the letter of the Office of Price Administration dated April 5, 1944, and hereinafter more fully referred to.

In support of this protest Utah Junk Company states:

1. The name and post office address of protestant is: Utah Junk Company, 850 South Fourth West, Salt Lake City, Utah.

Protestant is engaged in the gathering, purchasing, preparation, shipment and sale of scrap in Salt Lake City, Utah, and the sparsely settled trade area surrounding said City.

2. The name and post office address of the person filing this protest on behalf of Utah Junk Company, and the post office address of the person to whom all communications from the Office of Price Administration relating to this protest shall be sent is as follows: L. D. Foreman, Care of Utah Junk Company, 850 South Fourth West, Salt Lake City, Utah.

3. As hereinafter more fully set forth, the basis of this protest is the application of Revised Price Schedule No. 4 covering sales of heavy melting steel for use in steel mills to sales of scrap for use in lead blast furnaces. Specifications set forth in Section 1304.13 (f) (1) and 1304.13 (f) (2) and maximum prices for sales of such scrap provided in Section 1304.13 were promulgated apparently with the steel industry, its location, and the conditions of its operation in mind without thought of lead blast furnaces, their location and their peculiar requirements. That this statement is true has been recognized by the Office of Price Administration as will hereinafter be made to appear.

4. The amount of fluxing scrap used in lead blast furnaces is small compared with the amount used in the steel industry but it is submitted that the production of lead in war time is of vital and critical importance.

[fol. 3] 5. The lead ore mined in the mountains near Salt Lake City and ores brought from mines hundreds of miles distant are treated at lead smelters in the Salt Lake Valley. One of the principal lead smelters in the country is operated by United States Smelting, Refining & Mining Company at Midvale, ten miles south of Salt Lake City. Lead ores are treated in blast furnaces which require scrap iron as a fluxing agent.

6. Section 1304.13 (f) (1) and (2) set forth the specifications of No. 1 and No. 2 heavy melting steel. Those specifications are, respectively:

> (1) *No. 1 heavy melting steel.*—Clean wrought iron or steel scrap ¼ inch and over in thickness, not over 18 inches in width and not over 5 feet in length. Individual pieces must be free from attachments and so cut as to lie flat in the charging box. May include heavy forgings, forge butts, billet, bloom, slab or bar crops

not conforming to chemical analysis required for electric furnace or acid open hearth use. May include new mashed pipe ends, original diameter 4 inches and over. May not include auto body and fender stock.

(2) *No. 2 heavy melting steel.*—Wrought iron or steel scrap, black or galvanized, 18 inch and over in thickness, not over 18 inches in width and not over 5 feet in length. (Uncut bumpers and front axles of passenger automobiles, and uncut rear ends of passenger automobiles free of wheels and brake assemblies and drained of oil, may be included even though over 5 feet in length.) Individual pieces must be free from attachments and so cut as to lie flat in the charging box. May include pipe; heavy oil field or similar cable not less than 1 inch in diameter and cut to lengths of 3 feet or less; and car sides and light plate cut 15 inches by 15 inches or under. May not include auto body and fender stock ((2) amended by Amendment 8).

Protestant is informed and believes, and therefore states, the fact to be, that pieces of scrap of the sizes above specified are altogether suitable for use in the steel industry. But [fol. 4] before scrap can be used in a lead blast furnace it must be cut to sizes not greater than 12″ x 24″ and preferably 12″ x 22″. Larger pieces cannot be used in such furnaces.

Protestant is further informed and believes that in the populous and heavily industrialized areas where steel plants are located, and where the greatest need for scrap exists, scrap is to be found in the greatest abundance. Where scrap is available in great quantity it can be found in innumerable sizes and shapes so that by sorting small pieces can be made available. The area in which protestant operates is the most sparsely settled in the United States and the available supplies of scrap are correspondingly small. Protestant must accept such scrap as is available and it is and has been impossible to select from available stocks scrap to meet lead blast furnace requirements without preparing and cutting what there is to specifications required by smelters.

7. The smelting industry requires a dependable source of scrap for its requirements and has traditionally looked to and depended upon local dealers including protestant to meet their needs. Local dealers have met those requirements and protestant has for many years furnished the United States

Smelting, Refining & Mining Company with an important part of its requirements at its Midvale plant.

8. Protestant, in the regular course of business, has historically assembled scrap in its Salt Lake City yard from a wide-spread area. It has the facilities and the trained personnel to prepare scrap by use of electric shears and torches to the specifications required by the Smelting Company. It has shipped scrap thus prepared to smelting plants at prices agreed upon. Before the war and for a time after December 7, 1941, protestant shipped to Midvale plant and charged therefor $16.63 per gross ton.

9. Up until about the 10th day of October 1943, in accordance with instructions of Office of Emergency Management, shipments to United States Smelting, Refining & Mining Company's smelter at Midvale were billed on the basis of $13.00 per gross ton.

10. On or about the 25th day of April 1942 the Office of Price Administration informed United States Smelting, Re- [fol. 5] fining & Mining Company and protestant that shipments of scrap to United States Smelting, Refining & Mining Company by protestant would be covered by 1304.13. Protestant took the position that 1304.13 was not intended to apply to smelter fluxing scrap but was written without consideration of the peculiar requirements of the smelting business. Protestant did not, however, insist upon; and did not collect in excess of maximum prices fixed by Section 1304.13.

11. Between the 25th day of April, 1942 and the 10th day of February, 1943 protestant shipped to and United States Smelting, Refining & Mining Company received 3048.33 gross tons of smelting scrap prepared by protestant to sizes required for lead blast furnace fluxing scrap. Protestant billed United States Smelting, Refining & Mining Company for said scrap at the rate of $16.63 per ton but said Smelting Company paid to protestant therefore only the maximum price provided by Section 1304.13 for No. 1 and No. 2 heavy melting steel and made no allowance whatsoever for the cost of cutting and preparing said scrap to the specifications required for lead blast furnace fluxing scrap.

12. Protestant, without admitting that Section 1304.13 of said regulation applied to said shipments and in the belief that it could ultimately procure some measure of relief from the Office of Price Administration, has taken no action to

enforce further payment from United States Smelting, Refining & Mining Company.

13. Protestant states that it was impossible for it to acquire and pay for the scrap in said shipments and to prepare it for use in lead blast furnaces at the prices fixed by Section 1304.13 without suffering serious loss.

14. About the month of May 1942 protestant began negotiations with the Salt Lake City office of Price Administration seeking relief from the situation which made it economically impossible for protestant to acquire and prepare smelter fluxing scrap at prices fixed by Section 1304.13. In the meantime smelters were required to acquire miscellaneous scrap and prepare it to proper sizes in their own yards. And protestant is informed and believes, and therefore states the fact to be, that the cutting of scrap by [fol. 6] smelters in their own yards was wasteful and uneconomical and increased the cost of producing lead over what the cost would have been if dealers were allowed to charge a reasonable sum per ton for preparation.

In the month of May 1943 it was impliedly recognized by the Office of Price Administration that the specifications for No. 1 and No. 2 heavy melting steel were not fairly applicable to lead blast furnace fluxing scrap and that the requirements of smelters for lead blast furnace fluxing scrap were more nearly covered by the specifications of foundry steel as fixed in Section 1304.13a. Accordingly scrap dealers furnishing lead smelter fluxing scrap, including this protestant, were, by order, dated June 3, 1943, allowed to add $1.50 per ton to the maximum price provided by 1304.13 if the material furnished conformed to the size and other specifications of foundry scrap. Said order reads as follows:

Office of Price Administration

509 Atlas Building

Salt Lake City, Utah, June 3, 1943.

Utah Junk Company, 850 South Fourth West, Salt Lake City, Utah.

GENTLEMEN:

I am enclosing a copy of Amendment #12 to Revised Price Schedule #4, covering Iron & Steel Scrap. This Amendment is effective as of May 29, 1943.

You will note that a change has been made in the floor price of #1 and 2 heavy melting steel, the floor price now being $14.00 per gross ton f. o. b. remote shipping points; the price of unprepared scrap has been restored to $10.50 per gross ton f. o. b. same points.

This Amendment also includes premium allowance of $1.50 and $2.00 per gross ton to apply on the sales of smelter fluxing scrap. The specifications covering the fluxing scrap are covered by Items #22 and 23, Foundry Steel 1′ and under and 2′ and under. These [fol. 7] specifications appearing on page 3 of RPS #4 as amended February 11, 1943.

Yours truly, Dr. Mark H. Green, State Price Officer, (S.) Carl D. Roady, by Carl D. Roady, Associate Price Specialist.

15. Thereafter and by authority of letter of April 5, 1944, protestant was notified as follows:

Office of Price Administration

Washington, D. C. (25),
April 5, 1944.

Utah Junk Company, 850 So. Fourth W., Salt Lake City, Utah.

In reply refer to 674: CDS-RPS 4

GENTLEMEN:

On January 28, 1944, you addressed a request to Mr. Carl D. Roady, Associate Price Specialist, Salt Lake City, Utah, applying for permission to charge a fee of $1.50 per gross ton for preparing steel to smelter specifications. Under date of February 19, 1944 you received authority from the Utah Office of the Office of Price Administration to charge this fee. The National Office now confirms the authorization granted by the Utah State Office over the signature of Mr. Carl D. Roady.

According to the provisions of Section 1304.13 (a) (5) of Revised Price Schedule 4, you are hereby authorized to charge a fee of $1.50 per gross ton in addition to the

price of No. 2 heavy melting steel for preparation of No. 2 heavy melting steel to the following specifications:

"Wrought iron or steel scrap, black or galvanized, ⅛ inch and over in thickness, not over 12 inches in width, and not over 2 feet in length. Individual pieces shall [fol. 8] not weigh over 50 pounds, must be free from attachments and so cut as to lie flat in the charging box. May include pipe cut to lengths of 2 feet or less; may include heavy oil field or similar cable not less than 1 inch in diameter and cut to lengths 2 feet or less. May not include auto body and fender stock, tin plate, terne plate, or other metal coated material."

This authorization shall apply only on sales to nonferrous smelters and shall be subject to revocation at any time.

Yours very truly, (S.) C. D. Scully Jr., Chief, Scrap and Reusable Products Section, Iron and Steel Price Branch.

16. By authority of said order of June 3, 1943, relating smelter fluxing scrap to foundry steel and by its order of April 5, 1944 establishing a special specification for smelter fluxing scrap, it was recognized that Section 1304.13 covering No. 1 and No. 2 heavy melting steel was never fairly applicable to shipments of prepared scrap made by protestant to United States Smelting, Refining & Mining Co.

17. Upon all shipments made by protestant to the United States Smelting, Refining & Mining Company between the 25th day of April 1942 and the 10th day of February 1943, totalling 3,048.33 gross tons, protestant has never received any payment in excess of that allowed under Section 1304.13 for No. 1 and No. 2 heavy melting scrap and particularly has never received anything in reimbursement of the cost incurred by protestant in preparing said scrap to the specifications required for lead blast furnace fluxing scrap. In view of the fact that it is now recognized that smelter fluxing scrap justifies and requires a special specification to meet the peculiar needs of lead smelting, it is just and proper that protestant be allowed to demand and receive from United States Smelting, Refining & Mining Company the sum of $1.50 on account of each ton of scrap shipped to and received by United States Smelting, Refining & Min- [fol. 9] ing Company between April 25, 1942, and Febru-

ary 10, 1943; said shipments amount to 3,048.33 gross tons and the sum of $1.50 on each ton thereof equals the sum of $4,572.49. Such payment would be in harmony with the orders of June 3, 1943, and April 5, 1944, set forth above and would partially reimburse protestant for losses sustained in the purchase, preparation and shipment of said scrap to United States Smelting, Refining & Mining Company and is necessary to maintain the solvency of protestant's business. Further protestant is informed and believes, and therefore states the fact to be, that the United States Smelting, Refining & Mining Company is ready, able and willing to make such payments at any time it can do so without violation of lawful regulations.

Protestant further represents that on account of each shipment made by protestant to United States Smelting, Refining & Mining Company between April 25, 1942, and February 10, 1943, said Smelting Company deducted certain freight charges incurred by protestant, all of which deductions amount to the sum of $3,228.72. Protestant represents that said deductions were improperly made and that such deductions were not required or authorized by any order or regulation of the Office of Price Administration. Protestant is informed and believes, and therefore states the fact to be, that the United States Smelting, Refining & Mining Company is ready, able and willing to reimburse said protestant for said deductions and the same are due and payable to protestant without regard to allowances sought by this protestant for the cost of preparing scrap to the specifications required for said Smelting Company's lead blast furnaces.

18. Protestant, during the period between April 25, 1942, and February 10, 1943, continued to ship scrap to the United States Smelting, Refining & Mining Company prepared to meet its specifications for the lead blast furnace fluxing scrap notwithstanding the loss involved therein because of its long and friendly relations with said Smelting Company and its knowledge of the requirements of said Company and because of its feeling that some day just and proper adjust-
[fol. 10] ment would be made through the Office of Price Administration which would permit of a partial recovery of the loss involved. Protestant could not have continued in business and could not now continue to perform its functions at all except that it has borrowed capital from one of its

stockholders, L. D. Foreman, in order to prevent a shut-down and liquidation of its business. Protestant will be unable to repay the sums borrowed by it unless it is authorized to collect the sum of $1.50 per ton from United States Smelting, Refining & Mining Company upon each and every ton of scrap shipped between April 25, 1942, and February 10, 1943, amounting to $4,572.49, and the freight charges withheld on said shipments, amounting to $3,228.72, all of which sums will be paid by United States Smelting, Refining & Mining Company upon authority of the Office of Price Administration.

Wherefore, Utah Junk Company protests the application of Section 1304.13 establishing maximum prices for No. 1 and No. 2 heavy melting scrap to shipments of scrap made by protestant to United States Smelting, Refining & Mining Company between April 25, 1942, and February 10, 1943, and requests authority to demand and collect from United States Smelting, Refining & Mining Company the sum of $4,572.49, representing $1.50 per ton preparation charge for 3,048.33 tons of scrap prepared to the specifications required for lead blast furnace fluxing scrap and shipped and sold to United States Smelting, Refining & Mining Company between the 25th day of April 1942 and the 10th day of February 1943.

Utah Junk Company, a Corporation, by (Sgd.) L. D. Foreman.

[fol. 11] *Duly sworn to by L. D. Foreman. Jurat omitted in printing.*

[fol. 12] BEFORE THE OFFICE OF PRICE ADMINISTRATION

Docket No. 1004-9-P

In the Matter of UTAH JUNK COMPANY, Protestant

ORDER DENYING PROTEST

On August 7, 1944, Utah Junk Company, 850 South Fourth West, Salt Lake City, Utah, filed a protest "against the application of the provision of Section 1304.13 of Revised Price Schedule No. 4 establishing maximum prices for sales of No. 1 and No. 2 heavy smelting steel to sales of smelting

fluxing scrap." Due consideration has been given to the protest and an opinion in support of this order is issued simultaneously herewith and filed with the Secretary of the Office of Price Administration.

For the reasons set forth in the opinion in accordance with the Emergency Price Control Act of 1942, as amended, and Revised Procedural Regulation No. 1, it is ordered that protest Docket 1004-9-P, be, and it hereby is, denied.

Issued and effective this 20th day of October 1944.

(Sgd.) Chester Bowles, Administrator.

[fol. 13] BEFORE THE OFFICE OF PRICE ADMINISTRATION

Docket No. 1004-9-P

In the Matter of UTAH JUNK COMPANY, Protestant

OPINION ACCOMPANYING ORDER DENYING PROTEST

On August 7, 1944, Utah Junk Company, 850 South Fourth West, Salt Lake City, Utah, herein called Protestant, filed a protest "against the application of the provisions of Section 1304.13 of Revised Price Schedule No. 4[1] establishing maximum prices for sales of No. 1 and No. 2 heavy smelting steel to sales of smelting fluxing scrap." Protestant is engaged in the gathering, purchasing, preparation, shipment and sale of scrap in Salt Lake City, Utah, and the sparsely settled trade area surrounding said city. Hence Protestant is subject to the regulation.

Protestant states that lead ore mined in the mountains near Salt Lake City and ore brought from mines hundreds of miles distant are treated at lead smelters in the Salt Lake Valley; that one of the principal lead smelters in the country is operated by U. S. Smelting, Refining and Mining Company at Midvale, ten miles south of Salt Lake City; and that lead ores are treated in blast furnaces which require scrap iron as a fluxing agent. Protestant points out that, in the regular course of business, it has historically as-

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[1] Reissued as Maximum Price Regulation No. 4 on June 30, 1944. The Schedule was first issued on April 2, 1941 under executive authority of the Advisory Commission for the Council of National Defense.

sembled scrap in its Salt Lake City yard from a widespread area; that it has the facilities and the trained personnel to prepare scrap by use of electric shears and torches to the specifications required by the U. S. Smelting, Refining and Mining Company; that it has shipped scrap thus prepared [fol. 14] to smelting plants at prices agreed upon and that before the war and for a time after December 7, 1941, Protestant shipped to the Midvale plant of U. S. Smelting, Refining & Mining Company and charged therefore $16.63 per gross ton.

Protestant alleges that on or about the 25th day of April, 1942 the Office of Price Administration informed U. S. Smelting, Refining & Mining Company and Protestant that shipments of scrap to U. S. Smelting, Refining & Mining Company by Protestant would be covered by the maximum prices for No. 1 and No. 2 heavy smelting steel as defined in Section 1304.13 of Revised Price Schedule No. 4.[2] Prot-

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[2] These specifications, now contained in Section 23 of MPR No. 4, read as follows:

"(1) *No. 1 heavy melting steel.*—Clean wrought iron or steel scrap ¼ inch and over in thickness, not over 18 inches in width and not over 5 feet in length. Individual pieces must be free from attachments and so cut as to lie flat in the charging box. May include heavy forgings, forge butts, billet, bloom, stab or bar crops not conforming to chemical analysis required for electric furnace or acid open hearth use. May include new mashed pipe ends, original diameter 4 inches and over. May not include auto body and fender stock."

"(2) *No. 2 heavy melting steel.*—Wrought iron or steel scrap, black or galvanized, ⅛ inch and over in thickness, not over 18 inches in width and not over 5 feet in length (uncut bumpers and front axles of passenger automobiles, and uncut rear ends of passenger automobiles, free of wheels and brake assemblies and drained of oil, may be included even though over 5 feet in length.) Individual pieces must be free from attachments and so cut as to lie flat in the charging box. May include pipe; heavy oil field or similar cable not less than 1 inch in diameter and cut to lengths of 3 feet or less; and car sides and light plate cut 15 inches by 15 inches or under. May not include auto body and fender stock."

estant at that time contended that Section 1304.13 was not intended to apply to smelter fluxing scrap but was written without consideration of the peculiar requirements of the smelting business; however Protestant complied with the ruling. Accordingly between April 25, 1942 and February 10, 1943 U. S. Smelting, Refining & Mining Company paid to Protestant only the maximum prices provided by Section 1304.13 for No. 1 and No. 2 heavy melting steel and made no allowance whatsoever for the cost of cutting and preparing said scrap to the specifications required for lead blast furnace fluxing scrap. Protestant now asserts that [fol. 15] the maximum prices fixed by Section 1304.13 did not permit it to absorb the cost of preparing the scrap for use in lead blast furnaces and that it therefore suffered serious losses during the above named period.

Protestant states that in May 1942 it began negotiations with the State Office of the Office of Price Administration in Salt Lake City seeking relief from its situation; that office notified Protestant by letter of June 3, 1943 of the issuance of Amendment No. 12 to Revised Price Schedule No. 4, effective May 29, 1943, which increased the price of No. 1 and No. 2 heavy smelting steel in remote areas which include Utah. The amendment further provided for premium allowances of $1.50 and $2.00 per gross ton to apply on sales of foundry scrap suitable for smelter fluxing. Subsequently, Protestant received from the National Office of the Office of Price Administration a letter dated April 5, 1944 confirming the permission previously granted Protestant by the Utah State Office of the Office of Price Administration to charge a fee of $1.50 per gross ton in addition to the price of No. 2 heavy melting steel for preparation of No. 2 heavy melting steel to the following specifications:

> Wrought iron or steel scrap, black or galvanized, ⅛ inch and over in thickness, not over 12 inches in width, and not over 2 feet in length. Individual pieces shall not weigh over 50 pounds, must be free from attachments and so cut as to lie flat in the charging box. May include pipe cut to lengths of 2 feet or less; may include heavy oil field or similar cable not less than 1" inch in diameter and cut to lengths of 2 feet or less. May not include auto body and fender stock, tin plate, terne plate or other metal coated material.

Protestant claims that upon all shipments made by it to the U. S. Smelting, Refining & Mining Co. between April 25, 1942 and February 10, 1943, totalling 3048.33 gross tons, it has never received any payment in excess of that then allowed under Section 1304.13 for No. 1 and No. 2 heavy smelting scrap and particularly had never received any- [fol. 16] thing in reimbursement of the cost incurred by Protestant in preparing said scrap to the specifications required for lead blast furnace fluxing scrap; that in view of the fact that it is now recognized that smelter fluxing scrap requires a special specification to meet the peculiar needs of lead smelting, it is just and proper that Protestant be allowed to demand and receive from U. S. Smelting, Refining & Mining Company the sum of $1.50 per ton of scrap shipped to U. S. Smelting, Refining & Mining Company between April 25, 1942 and February 10, 1943 amounting to $4,572.49; and that the U. S. Smelting, Refining & Mining Company is ready, able and willing to make such payments at any time it can do so without violation of lawful regulation.

Protestant also claims that on account of each shipment made by it to U. S. Smelting, Refining & Mining Company between April 25, 1942 and February 10, 1943 said company deducted certain freight charges incurred by Protestant amounting to the sum of $3,228.72, which deductions were improperly made and were not required or authorized by any order or regulation of the Office of Price Administration; and that said company is ready, able, and willing to reimburse Protestant for said deductions which are due and payable to Protestant without regard to allowance sought by Protestant for the cost of preparing scrap to the specifications required for said Smelting Company's lead blast furnaces.

Protestant requests by way of relief that it be permitted to demand and collect from United States Smelting, Refining & Mining Company the sum of $4,572.49, representing $1.50 per ton preparation charge for 3,048.33 tons of scrap prepared to the specifications required for lead blast furnace fluxing scrap and shipped and sold to said company between April 25, 1942 and February 10, 1943.

Such request for retroactive relief must be denied. Retroactive relief in general may not be permitted if price control is to be successful. Whatever may be the good faith of the present Protestant, undoubtedly if sellers had before

them the possibility of retroactive relief many sellers would be encouraged to circumvent or evade a maximum price regulation by inducing a buyer to pay more than a maximum price, upon promises of refund, if retroactive relief were [fol. 17] not given. The inflationary danger of such a practice is obvious. Increases in the actual amount paid for a commodity would not be halted were such a practice to be encouraged. Inflationary pressures are occasioned by the actual amounts required to be paid regardless of prospective or uncertain refunds.

Moreover, in still another way, even the possibility of retroactive relief would tend to defeat the effective operation of price regulations. Purchasers would have to take into account that possibility in determining their own selling prices. Thus the filing of a petition or protest with the possibility of retroactive relief, would immediately generate inflationary pressures irrespective of the merits of such petition or protest or its ultimate disposition. Because of these considerations it is clear that retroactive relief can be granted only in the most exceptional circumstances.[3] Moreover, in the present case not only is the regulation silent on the question of retroactivity of preparation charges,[4] but there is also no satisfactory explanation why Protestant failed to file a protest at the time it felt aggrieved by the Regulation and no evidence in support of the charge that without retroactive relief Protestant could not carry on its business.

Protestant's contention that the Administrator, in issuing Amendment No. 12, impliedly recognized the unfairness of the previous pricing method, is clearly without merit. The Administrator's authority to carry out improvements in price control techniques is essential to the proper discharge

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[3] *Dur-O-Lite Pencil Company* (Pike & Fisher OPA Service 600:246); *Matter of Mary J. McCormick* (Pike & Fisher OPA Service 602:5).

[4] Compare *Samuel M. Goodman and Anna Mandelman, Complainants* v. *Chester Bowles, Price Administrator, Respondent*, 138 F. (2d) 917 (E. C. A. decided November 22, 1943); *Buckley Dement & Company, Complainant* v. *Chester Bowles, Price Administrator, Respondent*, 143 F. (2) 877 (E. C. A. decided July 13, 1944).

of his duties;[5] that authority would in effect be nullified if

[5] *Foster & Co.* v. *Bowles*, decided September 27, 1944, Em. App.

each amendment of an outstanding regulation were to be construed as an admission of the illegality of the previous price.

Finally, the item of freight charges, amounting to $3,228.72, deducted by U. S. Smelting, Refining & Mining Company from payments made to Protestant for shipments [fol. 18] during the period between April 25, 1942 and February 10, 1943 would appear to be a matter solely concerning Protestant's relationship with its customer, provided that the freight charges were those permitted by the regulation. Nothing in the regulation prevents Protestant from accepting reimbursement for proper freight charges.

For the aforesaid reasons the protest must be denied.

Issued and effective this 20th day of October 1944.

(Sgd.) Chester Bowles, Administrator.

[fol. 19] Before Office of Price Administration

Statement of Considerations Involved in the Issuance of Amendment No. 10 to Revised Price Schedule No. 4[1]—Iron and Steel Scrap

Preparation Differentials.—Amendment No. 10 institutes several upward adjustments in the differentials heretofore established in the Schedule between unprepared and prepared grades of scrap. Section 1304.13 (e) (2), has been amended to increase from $2.50 per gross ton to $3.50 per gross ton the differential between unprepared scrap and the "corresponding grade or grades of prepared scrap."

[1] The protest (*supra*, p. 6) and the Administrator's opinion accompanying the order denying the protest (*supra*, pp. 15, 17) erroneously state that Amendment No. 12 to Revised Price Schedule No. 4 provided for premium allowances of $1.50 and $2.00 to apply on sales of foundry scrap. These allowances, and appropriate changes in the specifications, were actually provided by Amendment No. 10, issued on January 16, 1943 (8 F. R. 857, 858).

The increase in this differential has been effectuated through reducing the price of unprepared scrap, leaving unchanged the price of prepared scrap. (No change has been made in the $4.00 per gross ton differential established by Amendment No. 7 between No. 1, No. 2, and No. 3 bundles and the unprepared material from which such bundles are made.) Price Schedule No. 4 does not fix the maximum price at which a dealer may purchase unprepared scrap. However, since under the Schedule consumers may pay prices for unprepared scrap up to a specified amount per gross ton less than the price of prepared scrap, dealers often must meet consumer competition by paying at least the same price for unprepared scrap that a consumer can pay. This results in allowing the dealer a preparation margin not equivalent to the differential in prices between prepared and unprepared scrap. In the situation where [fol. 20] consumers could pay for unprepared scrap as much as $2.50 per gross ton less than the price of prepared scrap, they have been able to buy large tonnages of unprepared scrap in amounts substantially in excess of that which they normally bought. The purchase of this unprepared material by the mills has, in many cases, been economically disadvantageous since the mills would frequently charge inadequately prepared scrap into their furnaces, thereby impairing their productive efficiency; or, if they would prepare the scrap properly, their costs of preparation would frequently be greater than such costs to dealers. The high cost of preparation of scrap by the mills in many cases is due to the inadequacy of their facilities for such preparation and the lack of persons skilled in such operation. By reducing the prices which consumers may pay for unprepared scrap through the medium of widening the differential in the prices of the prepared and unprepared grades, the abnormal flow of unprepared scrap to consumers should be very substantially reduced. With the operations of this increased differential, it will be economically more advantageous for the initial owners of the unprepared scrap to sell to dealers than to consumers and dealers will be in a position to pay more for unprepared scrap because of the widened differential. Moreover, this widened differential will enable dealers to absorb increases in the costs of preparing scrap. These cost increases have been due in large measure to increases in wage rates necessitated often by the competition of war industries for labor,

to over-time premiums, and to the frequently poor quality of scrap reaching the dealers from other than usual sources, e. g. salvage campaigns. It is believed, therefore, that the amendment of section 1304.13 (e) (2) will have the effect of re-establishing the normal flow of scrap through dealers' yards for preparation into a form most suitable for consumption. It may be pointed out that the War Production Board and the Iron and Steel Scrap Industry Advisory Committee, part of whose members are representatives of consumers using substantial tonnage of scrap, have recommended that the foregoing adjustment in the differential between the prices of prepared and unprepared scrap be made.

The effect of increases in cost of preparation has been particularly apparent with reference to the preparation of [fol. 21] cut electric furnace, acid open hearth, and foundry grades. The Schedule has contained fixed differentials for further preparing basic open hearth grades into shorter lengths suitable for electric furnace, acid open hearth and foundry consumption. Such short cut grades include Items 18, 19, and 20, Cut structural and plate scrap, and Items 21, 22, and 23, Cut automotive steel scrap.

In general, the Schedule has sought to establish for these special short cut grades prices that are adequate to cover the additional costs of preparation. Prior to Amendment No. 10, Cut structural and plate scrap 3 feet and under was priced at $1.00 per gross ton over Heavy melting steel, and for cutting to 2 feet and under or 1 foot and under an additional 50¢ per gross ton and $1.00 per gros ton respectively were permitted. Cut automotive steel scrap 3 feet and under commanded the same price as Heavy melting steel, and when cut to 2 feet and under, or 1 foot and under commanded 50¢ and $1.00 per gross ton more respectively. By virtue of Amendment No. 10, the prices of Cut structural and plate scrap have each been increased 50¢ per gross ton. The prices of Cut automotive steel scrap (now designated Foundry steel) have been increased $1.00 per gross ton. Under Amendment No. 8, certain types of automotive steel (e. g., uncut bumpers, front axles of passenger automobiles) were included within the specifications of No. 1 heavy melting steel. Since the maximum price of automotive steel scrap, 3 feet and under, was the same as the maximum price for No. 2 heavy melting steel, it was found that foundry consumers had difficulty in obtaining cut automotive steel scrap

in short lengths requisite for melting in their furnaces. In the judgment of the Administrator, these modified prices will more adequately cover the additional cost of preparing scrap into short lengths rather than into Heavy melting steel. The prices meet with the approval of the War Production Board, and complement the War Production Board's program for channelling an adequate supply of specially prepared material into electric furnace, acid open hearth, and foundry consumption.

Item 22, Cut automotive steel scrap 2 feet and under and Item 23, Cut automotive steel scrap 1 foot and under have [fol. 22] been redesignated as "Foundry steel, 2 feet and under" and "Foundry steel, 1 foot and under." The specifications for these grades no longer exclude all material other than automotive scrap. The War Production Board has stated that the available supply of Automotive steel scrap is insufficient to meet the heavy demands of electric furnace and foundry consumers, and that therefore the specifications for Cut automotive grades should be expanded to permit the inclusion of other material normally prepared into Heavy melting steel. In addition to this change, Item 21, Cut automotive steel scrap 3 feet and under has been eliminated. The elimination of Item 21 will not interfere with the availability of adequate short cut grades, since consumers who can use 3 foot material may also use 2 foot material, and in many instances secure more satisfactory results from the increased density of the charge.

The differential between Item 3, Clean auto cast and Item 4, Unstripped motor blocks, has been increased from 50¢ per gross ton to $2.50 per gross ton. This has been accomplished by reducing the price of Unstripped motor blocks by $2.00 per gross ton. This adjustment in the differential is deemed necessary to provide an adequate spread for preparing Unstripped motor blocks into Clean auto cast. When the original differential of 50¢ per gross ton was instituted, representations were made that the additional return from the non-ferrous metals recovered from the preparation of auto blocks would make such preparation profitable, even though the dealer purchased the Unstripped motor blocks at 50¢ per gross ton below the price of Clean auto cast. Experience has demonstrated that the 50¢ per gross ton differential is not satisfactory and has deterred the preparation of motor blocks by dealers. The new differential has been recommended by the Iron and Steel

Scrap Industry Advisory Committee, and in the judgment of the Administrator should be adopted.

Special Preparation Charges.—A new subdivision (ii) has been added to Section 1304.15 (a) (2) covering special preparation charges. The new provision provides that whenever scrap has arrived at the point of delivery and the consumer engages a dealer to prepare such scrap, no [fol. 23] charge may be made for such service unless prior approval has been secured from the Office of Price Administration. The terms of the provision are identical with Section 1304.13 (a) (5) (ii), and the reasons for instituting the latter provision are also applicable in this case.

Grade Specifications.—Numerous changes have been made in the specifications for both steel and cast iron scrap. In Section 1304.13 (f) the description of Item 4, No. 1 bundles has been amended to permit the inclusion of Stanley balls, mandrel wound bundles, and skeleton reels. This type of material prepared from new scrap is considered equivalent to the hydraulically compressed bundle, and under open competition was frequently sold at the same price as a new factory bundle. Similar classification has been accorded to new hand bundled scrap, which weighs 75 pounds per cubic foot, is tightly secured, and can stand handling with a magnet. These bundles are often prepared from new side and end sheet scrap, and form bundles that are considerably in excess of the 75 pounds per cubic foot minimum density required for a hydraulically compressed bundle.

The specifications for Item No. 11, No. 2 busheling, have been amended to allow oil field and similar cable cut to lengths of 2 feet or less, to be included in this grade. Representations have been made that considerable quantities of this cable in diameters less than 1 inch are available in the Pacific Northwest, and in the Southwest. In view of the diameter, the material could not be included in No. 2 heavy melting steel. When cut to lengths of 2 feet or less this cable would be suitable for basic open hearth consumption.

The new specifications for Item 8, Machine shop turnings, Item 9, Mixed borings and turnings, Item 10, Shoveling turnings, Item 28a, Baled machine shop turnings, have been discussed in connection with the new price relationships established for these grades. Similarly, the new specifica-

tions for Items 22 and 23, Foundry steel, are referred to in the earlier part of this statement dealing with the price differentials for short-cut electric furnace, acid open-hearth and foundry grades. Item 19, Cut structural and plate scrap 2 feet and under, now contains a width limitation of 18 inches [fol. 24] in contrast to the earlier specifications of 24 inches. The material meeting the 18-inch width specification is more suitable for use by consumers requiring scrap cut 2 feet and under.

The primary change in Section 1304.15 (c) defining cast iron grades of scrap is the elimination of Item 2, No. 1 machinery cast, and the correlative amendment of the specifications for No. 1 cupola cast to allow the inclusion of material normally sold as Machinery cast. Since No. 1 machinery cast did not exclude agricultural material, and bore the same price as No. 1 cupola cast, it was deemed advisable to consolidate the two grades. The basic size limitations of 24 inches by 30 inches and maximum weight limitation of 150 pounds have been retained.

The description of Item 3, Clean auto cast, no longer contains a requirement that the blocks be broken 75 pounds and under. So long as the Auto blocks are free of the material excluded by the specification, they are suitable for foundry consumption, even though weighing more than 75 pounds. The specifications for Item 4, Unstripped motor blocks, have been expanded to define more strictly the material that may be included in this grade. The new specifications expressly exclude transmissions, parts of frames, drive shafts, and differentials.

The newly amended Item 7, Charging box cast, now allows unbroken cast iron car wheels to be included. Under an earlier interpretation, cast iron car wheels not broken to the size specifications for No. 1 cupola cast were classified as Heavy breakable cast.

* * * * * * *

Issued this 16th day of January 1943.

(Sgd.) Leon Henderson, Administrator.

[fol. 25] BEFORE OFFICE OF PRICE ADMINISTRATION

STATEMENT OF CONSIDERATIONS INVOLVED IN THE ISSUANCE OF MAXIMUM PRICE REGULATION, NO. 4—IRON AND STEEL SCRAP

Introduction.—Maximum Price Regulation 4 incorporates Revised Price Schedule No. 4, Iron and Steel Scrap, including Amendments 12, 13, 14, and 15, as well as certain official interpretations issued thereunder. The Regulation includes changes made at the suggestion of the Industry Advisory Committee and the War Production Board, and simplifies the provisions of the Schedule. It makes no basic change in either price levels or the method by which the maximum prices for Iron and Steel Scrap are computed. Such changes as have been made are designed to clarify and simplify the former Schedule.

Simplification of the former Schedule, Revised Price Schedule No. 4, is first obtained through the organization of the Regulation which is divided into five articles and thirty-four sections. The articles cover "The Scope of the Regulation", "Maximum Prices", "General Provisions", "Specifications" and "Miscellaneous Provisions". Each section deals with one specific subject; to illustrate, Section 3 establishes basing point prices for Steel scrap of dealer and industrial origin and contains all information relating to such basing point prices; Section 6 deals with maximum delivered prices for steel scrap of dealer and industrial origin when delivered by rail, vessel, or combination thereof and contains all information relating to such delivered prices; Section 13 deals with the maximum delivered prices for iron and steel scrap when delivered by truck and contains all the information relating to this subject which was formerly contained in three separate appendices of Revised [fol. 26] Price Schedule No. 4. All the circumstances under which in-transit preparation of iron and steel scrap are permissible are set forth in Section 15 and the preparation fees are established in Section 16. The sections contain paragraphs and, in some instances, sub-paragraphs which are clearly identified. In this way, whenever a problem relating to a specific pricing question arises, the buyer or seller can find the solution in one clearly defined section of the Regulation.

Description of Action Taken.—Maximum Price Regulation 4 changes Revised Price Schedule No. 4 in the following respects:

18. Interpretations relating to the preparation of No. 2 Heavy Melting Steel to non-ferrous smelter specifications and for covering chemical borings loaded in open railroad equipment have been incorporated into the body of the Regulation.

Justification.—

18. Experience has shown that nonferrous smelters require iron and steel scrap cut to smaller sizes than those required for remelting. To meet these requirements the Office of Price Administration has authorized a uniform extra preparation fee of $1.50 per gross ton for preparing No. 2 Heavy Melting Steel to the smelter specifications. Chemical borings must be dry to be used efficiently for reducing purposes by the chemical industry. Normally such borings are shipped in box cars, but because of the heavy demands upon railroad equipment such cars have not always been available. Where open cars must be used the consumer requires that such cars be covered with a weather-resistant covering. Accordingly, the Office of Price Administration has authorized a uniform charge to cover the costs incurred in such an operation. While the charges authorized for these two types of preparation have been uniform, individual buyers and sellers were required by the terms of Revised Price Schedule No. 4 to request authorization from the Office of Price Administration before making such charges. To eliminate the necessity for obtaining prior approval from the Office of Price Administration, provisions [fol. 27] have been added to the Regulation permitting those extra preparation charges to be paid by all smelter or chemical consumers who require the extra service.

Conclusion.—The provisions of Maximum Price Regulation No. 4 have been arrived at after extensive consultations with members of the industry, the Industry Advisory Committee and the War Production Board. Drafts of the proposed revision were sent to each member of the Committee and to members of the War Production Board dealing with

the allocation and generation of iron and steel scrap. The persons consulted have generally approved the simplification and changes made in the Regulation.

The specifications contained in the Regulation have all been in general use in the industry prior to their adoption in the Regulation. They so closely approximate industry practices that the industry regards them as conforming to its practices and, furthermore, they have been approved by the Industry Advisory Committee.

The prices and provisions established by this Regulation are, in the opinion of the Administrator, generally fair and equitable, are in accordance with the Emergency Price Control Act of 1942, as amended, and consistent with Executive Orders No. 9250 and 9328. The Administrator has, therefore, determined that this Regulation be issued.

Issued this 30th day of June 1944.

(Sgd.) Chester Bowles, Administrator.

[fols. 28-29] Administrator's Certificate to foregoing transcript omitted in printing.

[fols. 30-31] In the United States Emergency Court of Appeals

No. 184

Utah Junk Company, a Corporation,

v.

Chester Bowles, Price Administrator

Supplemental Transcript of Proceedings Before the Price Administrator—Filed April 9, 1945

Before the Office of Price Administration

Docket No. 1004-9-P

In the Matter of Utah Junk Company, Protestant

Order Reopening Protest Proceeding and Providing an Opportunity to Present Additional Evidence

On January 16, 1945, the United States Emergency Court of Appeals, in the proceeding entitled *Utah Junk Co., a Corporation, Complainant vs. Chester Bowles, Price Ad-*

ministrator, Respondent, Docket No. 184, granted Complainant's application for leave to introdace certain additional evidence in the form of an affidavit of L. D. Foreman, President of Utah Junk Co., attached to the application and filed with the Court simultaneously with said application. The Court further ordered that such additional evidence be presented to the Price Administrator together with such other evidence as the Price Administrator deemed it necessary or proper to receive.

Accordingly, pursuant to said order of the U. S. Emergency Court of Appeals of January 16, 1945, it is hereby [fol. 32] ordered that the proceeding on Complainant's protest be reopened in accordance with said order of the Court and that Protestant be, and it hereby is, provided an opportunity to present such additional evidence to the Price Administrator by filing with the Secretary of the Office of Price Administration an original and four copies of the following items within thirty days after the date of this order:

(1) The affidavit of L. D. Foreman, dated December 21, 1944, attached to Protestant's application for leave to introduce evidence. (Only three additional copies need be submitted.)

(2) Profit and loss statements for each of the fiscal or calendar years ending in 1936 through 1939 and 1942 through 1944, showing separately officers' and directors' salaries and bonuses.

(3) A statement of the total dollars of net profit or loss in iron and steel scrap operations for the same period as determined by the company's method of accounting for each year.

(4) Balance sheets as of the close of the fiscal or calendar years 1936 through 1939 and 1942 through 1944.

(5) A statement as to the amount of dividends paid to stockholders during the fiscal or calendar years 1936 through 1939 and 1942 through 1944.

(6) A complete itemization of the cost factors on which is based Protestant's statement in the affidavit of L. D. Foreman, dated 12/21/44, that "during the period between April 25, 1942 and February 10, 1943, the average cost of preparing scrap to specifications required for smelter purposes was $8.47" and a statement as to the method used to compute such cost factors.

(7) An itemization of Protestant's monthly average purchase prices of iron and steel scrap as compared to

Protestant's monthly average selling prices of prepared scrap during the period 1936 through 1939 and 1942 through 1944.

(8) Such other relevant evidence as Protestant may desire to present.

Issued and effective this 27th day of January 1945.

(S.) Chester Bowles, Administrator.

[fol. 33] BEFORE OFFICE OF PRICE ADMINISTRATION

Evidence Filed by Protestant on February 28, 1945

AFFIDAVIT OF L. D. FOREMAN

STATE OF UTAH,
County of Salt Lake, ss:

L. D. Foreman, being first duly sworn upon his oath deposes and says; That he is a citizen of the State of Utah, over the age of 21 years; that he is and has been during all of the times herein referred to President of Utah Junk Company, a corporation of the State of Utah, which company is complainant in that certain proceedings in the United States Emergency Court of Appeals identified as Case No. 184.

Affiant further says that Utah Junk Company is and has been for many years engaged in the collection, sale, and distribution of scrap metal including scrap iron and during the present war and prior thereto sold scrap iron to United States Smelting, Refining & Mining Company for use as a fluxing agent in its lead blast furnaces at Midvale, Utah. In this connection affiant says that the area surrounding Salt Lake City is sparsely settled and the amount of scrap metal available at any point at any particular time is relatively small; that in order to acquire and assemble sufficient scrap to meet the needs of Utah Junk Company and its customers it was necessary to cover a wide area and to accept and ship whatever scrap was available without regard to the size of the pieces; that Utah Junk Company acquired the electric shears and torches and personnel able to use and employ such equipment for the purpose of cutting and preparing such scrap metal to meet the specification of its customers.

Affiant says that prior to the war and up to the occurrences hereinafter referred to, Utah Junk Company furnished practically all the fluxing requirements of the lead blast furnaces at the Midvale plant of the United States Smelting, Refining & Mining Company. Following the [fol. 34] beginning of the war and up to and including the 25th day of April 1942, Utah Junk Company continued to gather scrap metal, prepare the same to sizes needed for lead blast furnace fluxing, and to charge therefor prices agreed upon between the Junk Company and the Smelting Company.

Affiant says that on or about April 25, 1942, one R. W. Durgantz, a representative of the Office of Price Administration from Denver, visited the Offices of Utah Junk Company and inspected the books and records of said company. At said time the said Durgantz informed affiant and Utah Junk Company that regulations fixing ceiling prices for No. 1 and No. 2 heavy melting steel were applicable to shipments of scrap metal made and sold by Utah Junk Company to United States Smelting, Refining & Mining Company, and that no charge in excess of the maximum prices fixed by said regulations could be made. Affiant further says that on about the 25th day of April 1942, the said Durgantz also informed the United States Smelting, Refining & Mining Company that it could not lawfully pay the Utah Junk Company for scrap metal shipped to it for use in its lead blast furnaces any price or prices except those fixed by the Office of Price Administration for No. 1 and No. 2 heavy melting steel. Affiant says that that was the first time he or the Utah Junk Company had any knowledge or information that any claim would be made that No. 1 and No. 2 heavy melting steel prices would be applied to lead smelter fluxing scrap.

Affiant further says that at said time United States Smelting, Refining & Mining Company was not equipped to gather and assemble fluxing scrap nor was it possessed of the labor or equipment with which to prepare scrap metal for use in lead blast furnaces. Affiant further says that heavy melting steel may be used in steel mills in pieces 24" x 60", whereas, before scrap can be used for fluxing purposes in lead blast furnaces it must be cut to sizes approximately 12" x 24".

Affiant further says that following the information received from Mr. Durgantz, officials of the United States Smelting, Refining & Mining Company informed affiant

that it would be cheaper and generally more economical for it to pay Utah Junk Company the prices agreed upon [fol. 35] than to buy heavy melting steel and prepare the same in its own yards to the size required for fluxing lead blast furnaces. This affiant together with officials of the United States Smelting, Refining & Mining Company continued negotiations with the local office of the Office of Price Administration hoping that they might persuade the local office that heavy melting steel regulations were not applicable to lead smelter fluxing scrap. Believing that recognition that heavy melting steel regulations would not be held applicable, Utah Junk Company continued to ship scrap in large quantities from April 25, 1942 to and including February 10, 1943. On all such shipments Utah Junk Company billed the Smelting Company at prices higher than those fixed by heavy melting steel regulations but did not collect or attempt to collect any sums in addition to those permitted by the heavy melting steel regulations.

During all of said period affiant believed in good faith that recognition would come from the Office of Price Administration that heavy melting steel regulations were not applicable and were not intended to be applicable to scrap prepared for sale to and use by the Smelting Company. During said period many conferences were held with representatives of the Office of Price Administration and efforts were made to get all scrap dealers in Salt Lake City and vicinity to agree upon specifications and regulations which would suit the sale of scrap for smelting purposes. No such agreement was reached, but in May of 1943, affiant was informed by the Office of Price Administration that $1.50 a ton preparation charge would be allowed over and above the price of heavy melting steel if the quality of the scrap sold conformed to the specifications for foundry steel. Affiant construed such allowance as partial recognition at least on the part of the Office of Price Administration that lead blast furnace scrap was not embraced within the regulations covering heavy melting steel. Affiant says that following such allowance he continued to negotiate with the Salt Lake office of the Office of Price Administration seeking to get a clear-cut recognition that heavy melting steel regulations did not cover smelting scrap and that it was and always had been entitled to a special specification and regulation. Again negotiations continued with the Salt Lake office and again [fol. 36] efforts were made to get all scrap dealers in agree-

ment upon a specification to fit and cover Smelter fluxing scrap. No agreement could be reached, but on April 5, 1944, the Office of Price Administration announced a specification for lead blast furnace fluxing scrap and allowed a preparation charge of $1.50 per gross ton for such material.

Affiant further says that scrap sold to United States Smelting, Refining & Mining Company, and particularly that covered by the Utah Junk Company's complaint in this case, is required to be prepared to the unusual specifications needed by the Smelting Company and covered by the order of April 5, 1944. While pieces of scrap 24" x 60" are suitable in steel mills, the requirements of the lead smelting industry are such that scrap must be cut to sizes approximately 12" x 24", or less, as any larger pieces would be a detriment to the smelting process rather than an aid. Affiant further says that while the equipment and personnel used and employed to prepare scrap for lead smelting purposes could be used in the preparation of scrap to meet the specifications of heavy melting steel, nevertheless, the amount of shearing and torching to produce the small sizes required by smelting companies is much greater than would be required to prepare scrap for steel furnaces and the cost therefore is much greater.

Affiant further says that while the war created an artificial demand for scrap of all kinds for approximately a year prior to December 7, 1941, nevertheless, the Utah Junk Company traditionally sold unprepared scrap at a price not less than $4 per gross ton below that charged for prepared scrap. Affiant further says that during the period between April 25, 1942 and February 10, 1943, the average cost of preparing scrap to specifications required for smelter purposes was $8.47. During said period an allowance was made of $3.50 per ton for preparing miscellaneous scrap to specification set forth in heavy melting steel regulations. From and after June 3, 1943, an additional $1.50 was allowed for the further preparation of miscellaneous and heavy melting steel to the smaller specifications required by the smelting industry, making a total allowance of $5.00 per ton. This total allowance was and is approximately $3.50 below the cost of preparation.

[fol. 37] Affiant further says that during the year 1942, Utah Junk Company suffered a loss of $10,579.40 on its total operations and that practically all of said loss was suffered on account of the scrap iron department of its

business. In 1943 the Utah Junk Company had a total profit of $560.05; and in 1944, to and including October 31st, the Utah Junk Company has suffered a loss on its business of $1,133.20. Affiant says that departments of its business involving material other than scrap iron have shown some profit since April 25, 1942, but such profits have, except for the year 1943, been entirely overcome by losses on account of its scrap iron business. Affiant further says that because Utah Junk Company has been unable to sell scrap to smelting companies, except at a loss, the smelting companies have been driven to the collection and accumulation of scrap metal and the preparation thereof to required specifications with the result that Utah Junk Company and others similarly situated have been practically driven out of the smelter scrap business in this area, to the permanent injury of the business of Utah Junk Company. This damage to the business of Utah Junk Company has been aggravated by the fact that regulations by the Office of Price Administration allow the smelting companies to absorb freight on scrap iron from outlying territory, whereas, Utah Junk Company and dealers similarly situated have been denied the right to absorb such freight.

If the relief sought by Utah Junk Company in its complaint on file herein is granted, it will cover only a small part of the loss suffered by Utah Junk Company on the shipments made but it will give some financial relief for future operations. Utah Junk Company has continued its business during the last three years at a net loss and may be able to continue in a precarious condition in the future, but the losses already sustained in 1942 and 1944 and with the insignificant profit made in 1943 the Company is in serious need of the relief herein sought if it is to continue to perform the service which it has in the past performed. Even if the relief is granted as prayed in the complaint on file herein, Utah Junk Company will still have suffered a loss of more than $3.00 a ton on the shipments referred to in the complaint on file herein.

[fol. 38] Affiant further says that Utah Junk Company has at all times been required, in the accumulation of stock pile of scrap metal, to accept miscellaneous scrap wherever and wherever it can get it within the area served by it. Scrap so accumulated is of miscellaneous types, size, and quality and at no time has Utah Junk Company been able

to accumulate stock piles sufficient to select the sizes suitable for smelting purposes without cutting and preparing the same. Affiant is informed and believes that in more populous areas it would be possible to accumulate a stock pile from which smelter requirements could be selected without torching and shearing, but such is not true in the area served by Utah Junk Company. While some scrap is delivered to Utah Junk Company's yard in sizes suitable for smelting purposes, affiant says that approximately 70% of all smelter fluxing scrap shipped by Utah Junk Company to United States Smelting, Refining & Mining Company has required preparation by shearing or torching. Affiant further says that as the demand for scrap increased prior to and during the war it became increasingly difficult to get scrap in substantial quantities.

Affiant further says that prices fixed by heavy melting steel regulations never were sufficient to meet the cost to Utah Junk Company of acquiring scrap and preparing the same to smelter specifications and affiant is informed by officers of the United States Smelting, Refining & Mining Company and believes that the cost to the Smelting Company of shearing the torching scrap is greater than that to Utah Junk Company for the same service.

Affiant states that at all times from April 25, 1942, until the filing of the protest by Utah Junk Company he believed in good faith that the Office of Price Administration would recognize that shipments covered by the complaint on file herein were not subject to heavy melting steel prices and regulations. He further believed in good faith that the order of April 5, 1944, establishing particular specifications for smelter fluxing scrap, was full recognition by the Office of Price Administration that heavy melting steel regulations never did apply to smelter fluxing scrap. Affiant made such contention to the Salt Lake Office of the Office of Price Administration and when such office disagreed [fol. 39] with him he promptly filed his protest with the Office of Price Administration, which protest is the basis of plaintiff's complaint on file herein.

Affiant denies that the allowance of the relief sought herein would be inflationary and in support of his contention states that in 1943 an allowance of $1.50 a ton preparation charge was granted and again confirmed by the order of April 5, 1944. Affiant assumes that those allowances

are not inflationary and if not then the allowance of the relief herein sought could not be inflationary.

(Signed) L. D. Foreman.

Subscribed and sworn to before me this 21st day of December 1944.

(Signed) Edria T. Hansen, Notary Public, Residing at Salt Lake City, Utah.

[fol. 40] Before Office of Price Administration

[Title omitted]

Affidavit of John M. Margetts

State of Utah,
County of Salt Lake, ss:

John M. Margetts, being first duly sworn upon his oath, deposes and says: That he is a citizen and resident of the City and County of Salt Lake, State of Utah, over the age of twenty-one years and that he is now and at all times hereinafter mentioned was Secretary and Treasurer of Utah Junk Company, protestant above named, and as such has been the custodian of the Company's books and records.

Affiant further says that on the 27th day of January 1945, Chester Bowles, administrator of the Office of Price Administration, made his order directed to the Utah Junk Company directing that there be produced for filing in his office an original and four copies of the following within thirty days from and after January 27, 1945:

(1) The affidavit of L. D. Foreman, dated December 21, 1944, attached to Protestant's application for leave to introduce evidence. (Only three additional copies need be submitted.)

(2) Profit and loss statements for each of the fiscal or calendar years ending in 1936 through 1939 and 1942 through 1944, showing separately officers' and directors' salaries and bonuses.

[fol. 41] (3) A statement of the total dollars of net profit or loss in iron and steel scrap operations for the same period as determined by the company's method of accounting for each year.

(4) Balance sheets as of the close of the fiscal or calendar years 1936 through 1939 and 1942 through 1944.

(5) A statement as to the amount of dividends paid to stockholders during the fiscal or calendar years 1936 through 1939 and 1942 through 1944.

(6) A complete itemization of the cost factors on which is based Protestant's statement in the affidavit of L. D. Foreman, dated 12/21/44, that "during the period between April 25, 1942, and February 10, 1943, the average cost of preparing scrap to specifications required for smelter purposes was $8.47 and a statement as to the method used to compute such cost factors.

(7) An itemization of Protestant's monthly average purchase prices of iron and steel scrap as compared to Protestant's monthly average selling prices of prepared scrap dur the period 1936 through 1939 and 1942 through 1944.

(8) Such other relevant evidence as Protestant may desire to present.

Affiant further says that pursuant to said order he has prepared and submits herewith an original and four copies of the following:

(2) Profit and loss statements for each of the fiscal or calendar years ending 1936 through 1939 and 1942 through 1944 showing separately officers' and directors' salaries and bonuses. Said statements are headed, "Profit and Loss Statements" and are identified as "Item 2." Affiant says that the statements contained in said profit and loss statements are true and correct and are taken from the books and records of Utah Junk Company.

(3) A statement of the total dollars of net profit or loss in iron and steel scrap operations for the same period as determined by the company's method of accounting for each year. The profit and loss statements set forth are titled "Net Profit or Loss, Iron and Steel Scrap Operations, Utah Junk Company, Years 1936, 1937, 1938, 1939, 1942, 1943, 1944" and are identified as "Item No. 3." Said statements [fol. 42] are full, true, and correct as determined by the company's method of accounting for the years involved. Under the company's accounting the calendar year is the company's fiscal year.

(4) General balance sheets as of the close of fiscal years ending December 31, 1936, 1937, 1938, 1939, 1942, and 1944. Said balance sheets are titled "General Balance Sheet, Utah Junk Company" and identified as "Item 4." The figures taken from said balance sheets are taken directly from the books of the company for the years 1936, 1937, 1938, and 1939. Balance sheet figures per books for 1942, 1943, and 1944 were adjusted to show the charge out of the United States Smelting, Refining and Mining Company account, which is involved in the company's protest in this proceeding.

(5) A statement as to the amount of dividends paid to stockholders, both preferred and common, during the fiscal years 1936, 1937, 1938, 1939, 1942, 1943, and 1944. Said statement is titled "Statement Dividends Paid" and is identified as "Item No. 5." The figures contained in said statement are full, true, and correct and taken from the books of the comapny.

(6) Complete itemization of the cost factors on which protestant's statement in affidavit of L. D. Foreman dated 12 21 44 with respect to the cost of preparing scrap for smelter purposes is based. Said itemization is based upon the books and records of the company and the application of fair and reasonable percentages where estimates are necessarily involved. Said distribution is titled "Cost Distribution, Utah Junk Company" and is identified as "Item No. 6" and consists of one page of figures and one page of legend.

(7) An itemization of protestant's monthly average purchase price of iron and steel scrap as compared to protestant's monthly average selling price during the years 1936, 1937, 1938, 1939, 1942, 1943, and 1944. Said itemization is titled "Itemization Average Purchase and Selling Prices Scrap Iron" and is identified as "Item No. 7." The figures appearing on said itemization are taken from the books and records of the company and correctly set forth the purchase and selling prices there listed.

Affiant further says that historically there has been in the area served by the Utah Junk Company little or no [fol. 43] market for scrap iron prepared to heavy melting steel specifications. Most scrap purchased and sold by Utah Junk Company has been first prepared to the specification

demand by the lead blast furnace industry. The cost of such preparation has always required that prepared steel be sold at a price substantially higher than that received for unprepared scrap.

Affiant further says that the investigation and work in connection with the preparation of the data above referred to requires a correction in Page 4 of the affidavit filed on behalf of Utah Junk Company by L. D. Foreman under date of December 21, 1944. Whereas it is stated in said affidavit "that during the year 1942, Utah Junk Company suffered a loss of $10,579.40 on its total operations and that practically all of said loss was suffered on account of the scrap iron department of its business," the fact is that the Utah Junk Company suffered a loss in the year 1942 on account of its scrap iron business in the sum of $10,579.40 and the loss for that year on the company's total business was $6,805.51, the difference between the loss on scrap iron and the company's total loss being accounted for by profits gained during said year on the company's other business.

Further affiant saith not.

(Sgd.) John M. Margetts.

Subscribed and sworn to before me this 24th day of February, 1945. (Sgd.) Edria T. Hansen, Notary Public, Residing at Salt Lake City, Utah. (Seal.) My commission expires July 20, 1947.

[fol. 44] Item No. 2

Profit and Loss Statement, the Utah Junk Company, December 31, 1956

Sales		$147,512 59
Discounts on Purchases		18 25
Commissions Received		180 00
Gross Income		147,710 84
Less:		
Adjustments and Allowances	1,473 09	
Discounts on Sales	608 11	
Commissions	965 25	
Total Deductions	3,046 45	
Net Sales	144,664 39	
Direct Costs:		
Materials	97,865 62	
Labor	11,473 30	
Direct Charges	438 48	
Contract—Iron	2,328 91	
Total Direct Costs	112,106 31	
Prime Profit	32,558 08	
Indirect Costs:		
Supplies	5,204 97	
Rent	110 29	
Shipping Expense	2,413 75	
Demurrage	128 00	
Freight	3,054 04	
Heat, Light and Power	1,204 87	
Gas and Oil	1,510 69	
Watchman	560 43	
Reprs. and Maint. Machinery	636 87	
Reprs. and Maint. Autos and Trucks	983 36	
Reprs. and Maint. Buildings	73 78	
Total Indirect Costs	15,878 05	
Operating Profit	16,680 03	
Office and Administrative Expense:		
Manager, President and Director	6,000 00	
Managerial Expense	172 00	
Salesman, Secty-Treas	1,080 00	
Traveling Expense	114 15	
Office, Secty-Treas and Director	1,500 00	
Printing and Stationery	184 44	
Telephone and Telegraph	182 14	
Postage	98 67	
Advertising	28 50	
Sundry Office Supplies and Expense	1,029 98	
Insurance	300 00	
Liability Insurance	1,225 77	
Bad Debts	120 00	
Total Office and Administrative Expense	12,035 65	
Net Profit before Fixed Costs	4,644 38	

[fol. 45]

Fixed Costs:		
Taxes		$1,152.74
Interest		425.57
Depreciation		1,158.84
Total Fixed Costs		2,737.15
Profit from Operations, 1936		1,907.23

Profit and Loss Statement, the Utah Junk Company, December 31, 1937

Sales	$261,312.06	
Discounts on Purchases	132.86	
Gross Income		$261,444.92
Less:		
Adjustments and Allowances	2,237.05	
Discounts on Sales	780.32	
Commissions	551.00	
Total Deductions		3,568.37
Net Sales		257,876.55
Direct Costs:		
Materials	200,173.60	
Labor	14,696.31	
Direct Charges	80.89	
Contract, Iron	1,212.63	
Total Direct Costs		216,163.43
Prime Profit		41,713.12
Indirect Costs:		
Supplies	6,245.88	
Rent	113.56	
Shipping Expense	2,198.85	
Demurrage	97.00	
Heat, Light, and Power	1,652.27	
Freight	6,916.98	
Gas and Oil	1,457.66	
Watchmen	415.10	
Reprs. and Maint. Machinery	1,066.16	
Reprs. and Maint. Autos, and Trucks	1,447.15	
Reprs. and Maint. Buildings	76.11	
Total Indirect Costs		21,686.72
Operating Profit		20,026.40
Office and Administrative Expense:		
Manager, President, and Director	5,400.00	
Managerial Expense	186.15	
Office, Salesman, Secty-Treas	3,980.00	
Traveling Expense	354.23	
Printing and Stationery	262.60	
Telephone and Telegraph	299.71	
Postage	108.51	
Advertising	57.28	
Sundry Office Supplies and Expense	749.88	
Legal Expense	51.60	
Insurance	300.00	

[fol. 46]

Office and Administrative Expense—Continued.		
Liability Insurance	$1,773 88	
Bad Debts	180 00	
		$13,703 84
Net Profit before Fixed Costs		6,322 56
Fixed Costs:		
Taxes	1,143 48	
Interest	543 34	
Depreciation	1,625 04	
Social Security	276 31	
Unemployment Compensation	423 11	
Total Fixed Costs		4,011 28
Profit, Operations 1937		2,311 28

Profit and Loss Statement, the Utah Junk Company, December 31, 1938

Sales		$164,119 00
Less:		
Adjustments and Allowances		1,331 70
Discounts on Sales		406 14
Commissions Paid		465 20
Total Deductions		2,203 04
Net Sales		161,915 96
Direct Costs:		
Materials		107,358 43
Labor		14,562 99
Direct Charges		730 93
Contract		502 00
Total Direct Costs		123,154 05
Prime Profit		38,761 91
Indirect Costs:		
Supplies		5,904 22
Rent		124 27
Shipping Expense		1,237 24
Demurrage		67 80
Freight		5,943 55
Heat, Light, and Power		1,570 65
Gas and Oil		1,230 21
Watchmen		939 02
Reprs. and Maint. Machinery		713 41
Reprs. and Maint. Autos, and Trucks		748 77
Reprs. and Maint. Buildings		28 96
Total Indirect Costs		18,508 10
Operating Profit		20,253 81
Office and Administrative Expense:		
Manager, President, and Director		5,400 00
Managerial Expense		174 40
Office, Salesman, Secty-Treas., and Director		4,000 00
Traveling Expense		122 78
Printing and Stationery		191 71
Telephone and Telegraph		168 69

[fol. 47]

Office and Administrative Expense—Continued.	
Postage	$101.50
Advertising	29.00
Sundry Office Supplies and Expense	582.90
Legal Expense	19.20
Insurance	300.00
Liability Insurance	1,983.27
Bad Debts	1,112.02
Total Office and Administrative Expense	14,165.47
Net Profit before Fixed Costs	6,088.34
Fixed Costs:	
Taxes	1,556.28
Interest	619.01
Depreciation	1,742.88
Social Security	270.77
Unemployment Compensation	630.58
Total Fixed Costs	4,819.52
Profit from Operations, 1938	1,268.82

Profit and Loss Statement, the Utah Junk Company, December 31, 1939

Sales	$158,442.49
Discount on Purchases	11.08
Gross Income	158,453.57
Less:	
Adjustments and Allowances	969.51
Discounts on Sales	375.95
Commissions	416.00
Total Deductions	1,761.46
Net Sales	156,392.11
Direct Costs:	
Materials	103,450.82
Labor	15,451.27
Direct Charges	419.27
Total Direct Costs	119,321.36
Prime Profit	37,070.75
Indirect Costs:	
Supplies	5,084.20
Rent	18.75
Shipping Expense	325.70
Demurrage	28.60
Freight	5,864.99
Heat, Light, and Power	1,509.38
Gas and Oil	1,008.19
Watchman	991.00
Reprs. and Maint. Machinery	693.85
Reprs. and Maint. Autos, and Trucks	713.26
Reprs. and Maint. Buildings	24.90
Total Indirect Costs	16,192.82
Operating Profit	20,877.93

[fol. 48]

Office and Administrative Expense:	
Managers Salary, President, and Director	$5,400 00
Managerial Expense	191 40
Salesman, Office, Secty-Treas., and Director	4,150 00
Traveling Expense	86 36
Printing and Stationery	148 77
Telephone and Telegraph	183 46
Postage	108 00
Advertising	17 30
Sundry Office Supplies and Expense	304 57
Insurance	300 00
Liability Insurance	2,237 34
Bad Debts	240 00
Total Office and Administrative Expense	13,367 20
Net Profit before Fixed Costs	7,510 73
Fixed Costs:	
Taxes	1,666 59
Interest	472 06
Depreciation	1,902 84
Social Security	274 56
Unemployment Compensation	731 34
Total Fixed Costs	5,047 39
Profit from Operations, 1939	2,463 34

Profit and Loss Statement, the Utah Junk Company, December 31, 1942

Sales		$216,893 14
Discounts on Purchases		10
		216,893 24
Less:		
Adjustments and Allowances	1,842 39	
Discounts on Sales	447 56	
Commissions Paid	245 00	
Total Deductions	2,534 95	
Net Sales	214,358 29	
Direct Costs:		
Materials	154,623 20	
Labor	24,422 65	
Direct Charges	974 73	
Total Direct Costs	180,020 58	
Prime Profit	34,337 71	
Indirect Costs:		
Yard Superintendent	2,514 95	
Supplies	6,018 01	
Shipping Expense	883 08	
Demurrage	92 38	
Freight	5,649 17	
Heat, Light, and Power	2,567 99	
Gas and Oil	1,318 07	
Watchmen	1,921 79	
Reprs. and Maint. Machinery	794 85	

[fol. 49]

Indirect Costs—Continued.	
Reprs. and Maint. Autos and Trucks	$988.29
Reprs. and Maint. Buildings	76.43
Total Indirect Costs	22,825.01
Operating Profit	11,512.70
Office and Administrative Expense:	
Manager, President, and Director	5,400.00
Managerial Expense	207.85
Salesman, Office, Secretary-Treasurer, and Director	4,640.00
Traveling Expense	307.68
Printing and Stationery	241.40
Telephone and Telegraph	243.83
Postage	91.50
Advertising	36.00
Sundry Office Supplies and Expense	476.67
Insurance	300.00
Liability Insurance	2,863.69
Bad Debts	240.00
Total Office and Administrative Expense	15,048.62
Loss before Fixed Costs	(3,535.92)
Fixed Costs:	
Taxes	880.91
Interest	371.19
Depreciation	455.92
Social Security	401.42
Unemployment Insurance	1,128.75
Group Insurance	91.40
Total Fixed Costs	3,329.59
Loss from Operations, 1942	(6,865.51)

Profit and Loss Statement, the Utah Junk Company, December 31, 1943

Sales	$148,184.70
Commissions Received	500.78
Gross Income	148,685.48
Less:	
Adjustments and Allowances	1,584.18
Discount on Sales	277.13
Commissions Paid	213.00
Total Deductions	2,074.31
Net Sales	146,611.17
Direct Costs:	
Materials	98,910.28
Labor	19,546.80
Direct Charges	9.75
Total Direct Costs	118,466.83
Prime Profit	28,144.34
Indirect Costs:	
Yard Superintendent	792.15
Supplies	2,565.35
Shipping Expense	216.09
Demurrage	6.80

[fol. 50]

Indirect Costs—Continued.		
Freight		$501 67
Heat, Light, and Power		1,689 69
Gas and Oil		1,150 50
Watchmen		2,396 10
Reprs. and Maint. Machinery		1,023 59
Reprs. and Maint. Autos and Trucks		989 08
Reprs. and Maint. Buildings		2 30
Total Indirect Costs		11,333 32
Operating Profit		16,811 02
Office and Administrative Expense:		
Managers Salary, President, and Director		5,400 00
Managerial Expense		176 90
Salesman, Secretary-Treasurer, and Director		1,900 00
Traveling Expense		457 40
Office Salaries, Secretary-Treasurer, and Director		1,500 00
Printing and Stationery		110 74
Telephone and Telegraph		174 25
Postage		64 30
Sundry Office Supplies and Expense		657 09
Insurance		300 00
Liability Insurance		2,346 15
Bad Debts		240 00
Total Office and Administrative Expense		13,296 82
Net Profit before Fixed Costs		3,514 20
Fixed Costs:		
Taxes		884 07
Interest		332 09
Depreciation		355 92
Social Security		401 53
Unemployment Insurance		884 77
Group Insurance		95 76
Total Fixed Costs		2,954 14
Net Profit		560 06

Profit and Loss Statement, the Utah Junk Company, December 31, 1944.

Sales		$133,766 25
Commissions Received		265 13
Rent Received		650 00
Gross Income		134,681 38
Less:		
Adjustments and Allowances	563 09	
Discounts on Sales	110 00	
Commissions Paid	179 00	
Total Deductions	852 09	
Net Sales		133,829 29
Direct Costs:		
Materials		93,818 03
Labor		16,153 43
Total Direct Costs		109,971 46
Prime Profit		23,857 83

[fol. 51]

Indirect Costs:	
Yard Superintendent	$2,147.50
Supplies	2,103.00
Demurrage	20.90
Freight	191.02
Heat, Light, and Power	1,574.18
Gas and Oil	844.82
Watchmen	2,666.81
Reprs. and Maint. Machinery	1073.86
Reprs. and Maint. Autos and Trucks	546.00
Reprs. and Maint. Buildings	37.43
Total Indirect Costs	11,205.52
Operating Profit	12,652.31
Office and Administrative Expense:	
Manager and President and Director	4,600.00
Managerial Expense	150.05
Salesman and Office, Secty-Treas., and Director	3,000.00
Traveling Expense	90.00
Printing and Stationery	193.89
Telephone and Telegraph	155.88
Postage	67.00
Advertising	6.50
Sundry Office Supplies and Expense	483.16
Legal Expense	5.00
Insurance	300.00
Liability Insurance	2,073.84
Bad Debts	255.00
Total Office and Administrative Expense	11,380.32
Net Profit before Fixed Assets	1,271.99
Fixed Costs:	
Taxes	600.00
Interest	153.61
Depreciation	355.92
Social Security	340.32
Unemployment Insurance	825.51
Group Insurance	118.79
Total Fixed Costs	2,394.15
Loss, Operations, 1944	(1,122.16)

Item No. 3.

Statement, Net Profit or Loss, Iron and Steel Scrap Operations the Utah Junk Co., Years 1936, 1937, 1938, 1939, 1942, 1943, 1944

	Net profit	Net loss
1936	$2,703.94	
1937	3,868.53	
1938	3,958.84	
1939	245.64	
1942		$10,579.40
1943		6,940.29
1944		5,260.60

[fol. 52] Item No. 4

General Balance Sheet, the Utah Junk Company, December 31, 1936

ASSETS

Fixed Assets:		
Land	$1,843 20	
Buildings and Improvements	2,021 21	
Machinery and Tools	6,507 66	
Furniture and Fixtures	260 34	
Autos and Trucks	3,388 68	
Good Will	5,000 00	
Total Fixed Assets		$22,021 09
Working and Trading Assets:		
Stores, Inventory	11,265 58	
Stores, Midvale Mill	816 33	
Total Working and Trading Assets		12,081 91
Current Assets:		
Accounts Receivable	4,732 11	
Petty Cash	100 00	
Total Current Assets		4,832 11
		38,935 11

LIABILITIES

Capital Stock:		
Common, Authorized and Outstanding		5,000 00
Deferred Liabilities:		
L. D. Foreman	$9,150 00	
Western Steel & Foundry Co.	750 00	
Walker Bank & Trust Co.	150 00	
Total Deferred Liabilities		10,050 00
Current Liabilities:		
Accounts Payable	$ 979 32	
Bills Payable	440 00	
Bills Payable	215 00	
Bills Payable, W. B. & T. Co.	1,200 00	
Walker Bank & Trust Co.	2,962 87	
Pay Roll Accrued	549 92	
Bills Payable; Salt Lake Hardware Co.	204 21	
Total Current Liabilities		11,711 32
Reserves:		
Insurance	69 39	
Liability Insurance	95 17	
Depreciation	3,000 57	
Bad Debts	78 72	
Suspense	203 84	
Sales Tax	78 95	
Total Reserves		3,526 64
Surplus:		
Surplus, 12/31/35	5,985 91	
Dividend, Common Stock, No. 1	2,000 00	
	3,985 91	
Profit from Operations	1,907 23	
	5,893 14	
Less Misc. Profit and Loss Charges	245 66	
Surplus, 12/31/36		5,647 48
		38,935 44

[fol. 33]

ASSETS

Fixed Assets:		
Land	$4,843 20	
Buildings and Improvements	2,021 21	
Machinery and Tools	6,507 66	
Furniture and Fixtures	260 34	
Autos and Trucks	3,849 68	
Good Will	5,000 00	
Total Fixed Assets		$22,482 09
Working and Trading Assets:		
Stores	$11,068 60	
Stores, Midvale Mill	762 01	
Total Working and Trading Assets		11,830 61
Current Assets:		
Accounts Receivable	$10,039 93	
Walker Bank & Trust Co.	633 04	
Petty Cash	100 00	
Total Current Assets		10,772 97
Deferred Charges:		
Suspense		181 22
		45,266 89

LIABILITIES

Capital Stock:			
Common, Authorized and Outstanding		$5,000 00	
Preferred:			
Authorized	$25,000 00		
Unissued	13,200 00		
Outstanding		11,800 00	
Total Capital Stock Outstanding			16,800 00
Deferred Liabilities:			
Bills Payable, L. D. Foreman		$1,920 00	
Bills Payable, Walker Bank & Trust Co.		3,745 00	
Bills Payable, Walker Bank & Trust Co.		4,376 37	
Bills Payable, Walker Bank & Trust Co.		411 00	
John M. Margetts		1,600 00	
L. D. Foreman		50 00	
Total Deferred Liabilities			12,102 37
Current Liabilities:			
Accounts Payable		$2,004 72	
Pay Roll		684 17	
Total Current Liabilities			2,688 89
Reserves:			
Insurance		$133 31	
Liability Insurance		739 05	
Social Security		336 17	
Depreciation		4,325 61	
Bad Debts		53 24	
Sales Tax		385 44	
Unemployment Compensation		97 80	
Total Reserves			6,070 62

[fol. 54]

Surplus:			
Surplus 12/31/36		$7,617 78	
Dividends:			
Common	$2,000 00		
Preferred	354 00		
		2,354 00	
		5,263 48	
Profit, Operations 1937		2,311 28	
Misc. Profit and Loss		25	
Surplus 12/31/37			$7,605 01
			45,266 89

General Balance Sheet, the Utah-Junk Company, December 31, 1938

ASSETS

Fixed Assets:			
Land		$3,593 20	
Buildings and Improvements		2,021 21	
Machinery and Tools		6,773 46	
Furniture and Fixtures		270 34	
Autos and Trucks		1,387 68	
Good Will		5,000 00	
Total Fixed Assets			22,045 89
Working and Trading Assets:			
Stores, Inventory			11,216 13
Current Assets:			
Accounts Receivable		11,813 16	
Petty Cash		100 00	
Total Current Assets			11,913 16
Deferred Charges:			
Liability Insurance		2 92	
J. Tonge, P. L.		42 00	
Total Deferred Charges			44 92
			45,220 10

LIABILITIES

Capital Stock:			
Common, Authorized and Outstanding		$5,000 00	
Preferred:			
Authorized	$25,000 00		
Unissued	11,800 00		
Outstanding		13,200 00	
Total Capital Stock Outstanding			18,200 00
Deferred Liabilities:			
Bills Payable, L. D. Foreman		1,920 00	
L. D. Foreman		50 00	
John M. Margetts		1,600 00	
Bills Payable, Wipers, W. B. & T. Co.		488 00	
Bills Payable, Auto		779 00	
Bills Payable, Metals, W. B. & T. Co.		3,000 00	
Total Deferred Liabilities			7,857 00

[fol. 55]

Current Liabilities:			
Walker Bank & Trust Co.		$279.04	
Accounts Payable		6,307.06	
Pay Roll Accrued		650.46	
Total Current Liabilities			$7,236.56
Reserves:			
Taxes		339.41	
Insurance		169.01	
Social Security		129.94	
Depreciation		5,557.49	
Sales Tax		400.51	
Unemployment Compensation		225.36	
Suspense		69.97	
Total Reserves			6,891.69
Surplus:			
Surplus, 12/31/37		9,959.01	
Dividends:			
Common, No. 1	$2,000.00		
Preferred, 1, 2, 3	1,104 [illegible]		
		3,104.00	
		6,855.01	
Profit, Operations, 1938	1,268.82		
Misc. Profit and Loss	(38.98)		
		1,229.84	
Surplus, 12/31/38			8,084.85
			48,250.10

General Balance Sheet, the Utah Junk Company, December 31, 1939

ASSETS

Fixed Assets:			
Land		$5,593.20	
Buildings and Improvements		5,021.21	
Machinery and Tools		6,870.39	
Furniture and Fixtures		322.84	
Autos and Trucks		4,387.68	
Total Fixed Assets			$22,195.32
Investments:			
Bonds, Salt Lake Sodium Products Co.			400.00
Working and Trading Assets:			
Stores, Inventory		19,286.73	
Stores, Midvale, Mill		1,094.35	
Total Working and Trading Assets			18,192.38
Current Assets:			
Accounts Receivable		12,223.01	
Petty Cash		100.00	
Total Current Assets			12,323.01
Deferred Charges:			
Suspense			286.35
			53,397.06

[fol. 56]

LIABILITIES

Capital Stock:			
Common, Authorized and Outstanding		$5,000 00	
Preferred			
Authorized	$25,000 00		
Unissued	10,500 00		
Outstanding		14,500 00	
Total Capital Stock Outstanding			$19,500 00
Deferred Liabilities:			
Bills Payable, L. D. Foreman		1,920 00	
John M. Margetts		1,600 00	
Bills Payable, Walker Bank & Trust Co.		119 00	
Bills Payable, Walker Bank & Trust Co.		3,500 00	
Total Deferred Liabilities			7,139 00
Current Liabilities:			
Accounts Payable		5,534 69	
Walker Bank & Trust Co.		937 84	
Pay Roll Accrued		549 82	
Total Current Liabilities			7,022 35
Reserves:			
Taxes		1,069 35	
Insurance		284 53	
Liability Insurance		286 38	
Social Security		110 62	
Depreciation		7,460 33	
Bad Debts		37 38	
Sales Tax		506 78	
Unemployment Compensation		304 45	
Total Reserves			10,039 82
Surplus:			
Surplus 12/31/38		11 188 85	
Dividends:			
Common No. 1	$2,000 00		
Preferred	1,935 00		
		3,935 00	
		7,253 85	
Profit from Operations, 1939	2,463 34		
Less Misc. Profit and Loss	41 30		
		2,422 04	
Surplus 12/31/39			9,675 89
			53,397 06

General Balance Sheet, the Utah Junk Company, December 31, 1942

ASSETS

Fixed Assets:		
Land	$5,593 20	
Buildings and Improvements	5,021 21	
Machinery and Tools	7,289 09	
Furniture and Fixtures	422 84	
Autos and Trucks	3,554 64	
Total Fixed Assets		$21,880 98

[fol. 57]

Working and Trading Assets:			
Stores, Inventory			$20,971.62
Current Assets:			
Accounts Receivable		$7,478.20	
Petty Cash		100.00	
Total Current Assets			7,578.20
Deferred Charges:			
Pay Roll Accrued		15.00	
Suspense		191.91	
Total Deferred Charges			206.91
			50,637.71

LIABILITIES

Capital Stock:			
Common, Authorized and Outstanding		$5,000.00	
Preferred:			
Authorized	$25,000.00		
Unissued	6,600.00		
Outstanding		18,400.00	
Total Capital Stock Outstanding			23,400.00
Deferred Liabilities:			
Bills Payable, W. B. & T. Co.		7,500.00	
John M. Margetts		1,600.00	
Western Junk Co.		1,765.54	
Total Deferred Liabilities			10,865.54
Current Liabilities:			
Accounts Payable		1,917.32	
Walker Bank & Trust Co.		853.55	
Total Current Liabilities			2,770.87
Reserves:			
Taxes		.01	
Insurance		504.49	
Liability Insurance		302.24	
Social Security		121.66	
Depreciation		6,714.25	
Bad Debts		83.10	
Sales Tax		483.38	
Unemployment Insurance		330.04	
Total Reserves			8,539.17
Surplus:			
Surplus, 12/31/41		19,823.64	
Dividends:			
Common	3,000.00		
Preferred	4,896.00	7,896.00	
		11,927.64	
Loss, Operations, 1942		(6,865.51)	
Surplus, 12/31/42			5,062.13
			50,637.71

[fol. 58]

ASSETS

Fixed Assets:			
Land		$5,593 20	
Buildings and Improvements		5,021 21	
Machinery and Tools		7,289 09	
Furniture and Fixtures		422 84	
Autos and Trucks		3,554 64	
Total Fixed Assets			$21,880 98
Working and Trading Assets:			
Stores, Inventory			14,214 87
Current Assets:			
Accounts Receivable		7,131 97	
Petty Cash		100 00	
Liability Insurance Deposit		600 00	
Total Current Assets			7,831 97
Deferred Charges:			
Repairs and Maintenance Machinery		303 75	
Suspense		278 05	
Total Deferred Charges			581 80
			44,509 62

LIABILITIES

Capital Stock:			
Common, Authorized and Outstanding		$5,000 00	
Preferred:			
Authorized	$25,000 00		
Unissued	5,300 00		
Outstanding		19,700 00	
Total Capital Stock Outstanding			24,700 00
Deferred Liabilities:			
Bills Payable, W. B. & T. Co.			2,500 00
Current Liabilities:			
Accounts Payable		1,852 62	
Pay Roll Accrued		700 00	
Walker Bank & Trust Co.		352 62	
Total Current Liabilities			2,905 24
Reserves:			
Taxes		133 22	
Insurance		143 50	
Liability Insurance		358 51	
Social Security		105 14	
Depreciation		7,070 17	
Bad Debts		323 10	
Sales Tax		167 43	
Unemployment Insurance		191 01	
Income and Victory Tax		167 57	
Western Junk Co.		1,765 54	
Total Reserves			10,425 19

[fol. 59]

Surplus:			
Surplus, 12/31/42		$12,958 13	
Dividends:			
Common	$3,000 00		
Preferred	6,039 00	9,539 00	
		3,419 13	
Profit from Operations, 1943		560 06	
Surplus, 12/31/43			$3,979 19
			44,509 62

General Balance Sheet, the Utah Junk Company, December 31, 1944

ASSETS

Fixed Assets:			
Land		$5,593 20	
Buildings and Improvements		5,021 21	
Machinery and Tools		7,299 09	
Furniture and Fixtures		422 84	
Autos and Trucks		3,554 64	
Total Fixed Assets			$21,890 98
Working and Trading Assets:			
Stores		9,574 48	
Coal		330 19	
Total Working and Trading Assets			9,904 67
Current Assets:			
Accounts Receivable		8,704 82	
Walker Bank & Trust Co.		2,865 91	
Petty Cash		100 00	
Liability Insurance Deposit		600 00	
Total Current Assets			12,270 73
Deferred Charges:			
Reprs. and Maint. Machinery		382 21	
Suspense		184 29	
Total Deferred Charges			566 50
			44,632 88

LIABILITIES

Capital Stock:			
Common, Authorized and Outstanding		$5,000 00	
Preferred:			
Authorized	$25,000 00		
Unissued	5,300 00		
Outstanding		19,700 00	
Total Capital Stock Outstanding			24,700 00

[fol. 60]

Deferred Liabilities:			
Bills Payable, W. B. & T. Co.			$2,500.00
Current Liabilities:			
Accounts Payable		$3,057.70	
Pay Roll Accrued		778.08	
Total Current Liabilities			3,835.78
Reserves:			
Taxes		50.23	
Insurance		217.17	
Liability Insurance		296.92	
Social Security		129.64	
Depreciation		7,426.09	
Bad Debts		177.69	
Sales Tax		126.34	
Unemployment Insurance		205.59	
Income Tax		194.86	
Western Junk Co.		1,765.54	
Western Junk Co., Shear		150.00	
Total Reserves			10,740.07
Surplus:			
Surplus, 12/31/43		13,518.19	
Dividends:			
Common	$3,500.00		
Preferred	6,039.00		
		9,539.00	
		3,979.19	
Loss Operations, 1944		(1,122.16)	
Surplus, 12/31/44			2,857.03
			44,632.88

Item No. 5

Statement, Dividends Paid the Utah Junk Company, Years 1936, 1937, 1938, 1939, 1942, 1943, 1944

	Common dividends paid	Preferred dividends paid		Common dividends paid	Preferred dividends paid
1936	$2,000.00		1943	$500.00	$1,143.00
1937		$ 354.00	1944		
1938		750.00			
1939		831.00	Total	3,500.00	4,143.00
1942	1,000.00	1,065.00			

[fol. 61]

Item No. 6

Cost Distribution, the Utah Junk Company, April 25, 1942, to February 10, 1943

	Total	Average cost (net ton)		Scrap iron wt. 7,438,950	Other departments
Sales	$162,019.43	Act	$12.39	$46,083.01	$115,936.42
Less:					
Adj. and All	1,273.40	Av		545.27	728.13
Dis. on Sales	1,315.86	S		89.83	226.03
Commissions Paid	151.00	N			151.00
Total Deductions	1,740.26		.171	635.10	1,105.16
Net Sales	160,279.17			45,447.91	114,831.26
Direct Costs:					
Materials	116,563.72	Act	8.48	31,544.84	85,018.88
Labor	19,395.76	Act	3.248	12,229.06	7,166.70
Direct Charges	919.37	N			919.37
Total Direct Costs	136,878.85		11.768	43,773.90	93,104.95
Prime Profit	23,400.32			1,674.01	21,726.31
Indirect Costs:					
Yard Supt.	1,994.05	90%		1,794.65	199.40
Supplies	3,914.29	Act		3,149.68	764.61
Shipping Expense	1,048.33	Av		479.30	569.03
Demurrage	79.18	N			279.18
Freight	4,170.17	Act		2,901.19	1,768.98
Heat, Light, and Power	1,821.49	HP		1,062.18	59.01
Gas and Oil	1,041.93	Av		476.37	565.56
Watchmen	1,744.36	Av		797.52	946.84
R. and M. Machinery	694.43	V		336.80	357.63
R. and M. Autos and Trucks	568.96	V		275.95	293.01
R. and M. Buildings	76.43	N			76.43
Total Indirect Costs	17,153.62		3.031	11,273.94	5,879.68
Operating Profit-Loss	6,246.70			(9,599.93)	15,846.63
Office and Administrative Ex.:					
Manager, Pres., and Director	4,050.00	Av		1,851.66	2,198.34
Managerial Expense	156.25	Av		71.43	84.82
Salesman, Office, Secty	3,970.00	Av		1,815.08	2,154.92
Traveling Expense	219.47	Av		100.34	119.13
Printing and Stationery	133.79	Av		61.18	72.61
Telephone and Telegraph	179.25	Av		81.96	97.29
Postage	70.50	Av		32.23	38.27
Advertising	6.00	Av		2.74	3.26
Sundry Office Supplies	341.50	Av		156.13	185.37
Insurance	223.00	V		109.12	113.88
Liability Insurance	2,412.94	PR		1,520.15	892.79
Bad Debts	180.00	Av		82.30	97.70
Total Office and Adm. Ex.	11,944.70		1.582	5,884.32	6,060.38
Total Loss and Profit before Fixed Costs	(5,698.00)			(15,484.25)	9,786.25

[fol. 62]

Fixed Costs:					
Taxes	827 60	V	401 39	426 21	
Interest	411 58	V	199 62	211 96	
Depreciation	266 94	V	129 47	137 47	
Social Security	305 71	PR	192 60	113 11	
Unemployment Insurance	809 43	PR	509 94	299 49	
Group Insurance	79 19	PR	49 88	29 31	
Total Fixed Costs	2,700 45	398	1,482 90	1,217 55	
Net Loss or Profit	(8,398 45)		(16,967 15)	8,568 70	

	Net ton	Sales (percent)	Pay roll (percent)	Value (percent)	Horse-power	Average sales and pay roll
Average Selling Price	$12 39	0 2844	63			
Average Cost	16 95	7156	37			
Average Loss, Net Ton	4 56			485	5833	4572
Preparation Cost	8 47			515	4167	5428

See Legend below for Cost Distribution.

Legent, the Utah Junk Company, Cost Distribution, April 25, 1942, to February 10, 1943

Act	Actual Distribution
Av	Average, Sales and Pay Roll Percentages
S	Sales Percentages
N	Nothing
V	Value of Machinery, Percentages
HP	Horse Power Percentages
PR	Pay Roll Percentages

Item No. 7

Itemization, Average Purchase & Selling Prices, Scrap Iron, the Utah Junk Company

1936

	Purchase prices (net ton)	Selling prices (net ton)		Purchase prices (net ton)	Selling prices (net ton)
January	$3 59	$7 60	July	$4 65	$8 05
February	4 28	7 82	August	4 55	8 05
March	4 53	7 83	September	5 00	8 05
April	5 01	8 59	October	4 72	8 05
May	5 08	8 60	November	4 87	8 05
June	4 77	8 30	December	5 09	8 28

[fol. 63]

Itemization, Average Purchase & Selling Prices, Scrap Iron, the Utah Junk Company

1937

	Purchase prices (net ton)	Selling prices (net ton)		Purchase prices (net ton)	Selling price (net ton)
January	$4.84	$8.73	July	$6.63	$10.08
February	5.33	9.13	August	6.21	10.30
March	5.56	8.97	September	6.60	10.15
April	6.38	10.11	October	6.13	10.14
May	6.12	10.16	November	5.76	10.00
June	6.15	10.22	December	5.59	9.31

1938

January	$5.98	$9.25	July	$3.73	$8.50
February	4.83	8.81	August	4.36	8.60
March	5.24	9.14	September	4.20	8.80
April	5.07	9.00	October	4.23	9.00
May	4.39	9.00	November	4.80	9.24
June	3.88	8.67	December	4.46	8.92

1939

January	$4.37	$9.15	July	$4.64	$9.00
February	4.83	9.29	August	4.60	9.00
March	5.13	9.18	September	4.47	8.41
April	4.55	9.00	October	6.16	9.51
May	4.68	9.00	November	6.73	9.76
June	4.72	9.00	December	6.50	11.49

1942

January	$10.60	$15.21	July	$8.23	$11.61 OPA
February	9.97	15.50	August	6.72	11.61 OPA
March	9.75	15.50	September	7.86	11.61 OPA
April	9.92	15.50	October	7.94	11.61 OPA
May	9.76	11.61 OPA	November	6.65	11.61 OPA
June	8.78	11.61 OPA	December	5.76	11.61 OPA

1943

January	$6.90	$11.61 OPA	July	$8.35	$13.49
February	7.70	12.71	August	8.32	13.63
March	7.33	12.52	September	8.50	12.82
April	8.04	12.22	October	8.92	13.84
May	5.22	12.43	November	8.20	12.35
June	7.71	13.40	December	7.96	13.55

1944

January	$7.84	$13.29	July	$7.06	$13.84
February	8.13	13.27	August	7.28	12.92
March	7.77	12.74	September	7.92	12.88
April	7.45	13.38	October	8.22	13.11
May	8.25	13.32	November	7.44	12.88
June	6.01	13.19	December	7.14	13.12

[fol. 64] BEFORE THE OFFICE OF PRICE ADMINISTRATION

Docket No. 1004-9-P

In the Matter of UTAH JUNK COMPANY, Protestant

ORDER DENYING PROTEST UPON RECONSIDERATION

On January 27, 1945, the Administrator, pursuant to an order of the U. S. Emergency Court of Appeals entered in *Utah Junk Company* v. *Chester Bowles*, case No. 184, reopened the proceeding on the protest previously filed by Utah Junk Company against Revised Price Schedule No. 4 and provided Protestant with an opportunity to present additional evidence in support of its protest. Such evidence was subsequently filed by Protestant.

Due consideration has been given to the additional evidence and an opinion in support of this order has been issued simultaneously herewith. For the reasons stated in that opinion, and under the authority vested in the Price Administrator pursuant to the Emergency Price Control Act of 1942, as amended, it is hereby ordered that protest Docket No. 1004-9-P be, and it hereby is denied upon reconsideration.

Issued and effective this 4th day of April 1945.

(Sgd.) Chester Bowles, Administrator.

[fol. 65] BEFORE THE OFFICE OF PRICE ADMINISTRATION

Docket No. 1004-9-P

In the Matter of UTAH JUNK COMPANY, Protestant

OPINION ACCOMPANYING ORDER DENYING PROTEST UPON RECONSIDERATION

On January 16, 1945, the United States Emergency Court of Appeals, in the proceeding entitled *Utah Junk Co., a Corporation*, v. *Chester Bowles, Price Administrator*, Case No. 184, granted Complainant's application for leave to introduce ~~certain~~ additional evidence in the form of an affidavit of L. D. Fe[illegible]n, President of Utah Junk Co., attached to the application and filed with the Court simultaneously with said application. The Court further ordered that such additional evidence be presented to the Price Administrator

together with such other evidence as the Price Administrator deemed it necessary or proper to receive.

Accordingly, the Administrator, by order of January 27, 1945, reopened the proceeding on the protest and provided Protestant with an opportunity to present the affidavit attached to its application filed with the Court. Since that affidavit refers to heavy losses suffered by Protestant in 1942 and 1944 and states that the relief requested in the protest is urgently needed to enable Protestant to continue operations, the order of January 27, 1945 also provided Protestant with an opportunity to present more detailed evidence as to its financial situation in general and the results of its scrap operations in particular. Protestant was therefore requested to submit profit and loss statements both as to its overall and its scrap operations, balance [fol. 66] sheets, purchase and selling prices of scrap and an itemization of the cost factors referred to in the affidavit of Protestant's president. On February 28, 1945 Protestant submitted all of this evidence.

The protest had previously been denied on October 20, 1944. A brief restatement of the facts is therefore appropriate.

The sole issue in this proceeding is whether or not the Administrator acted arbitrarily and capriciously in denying Protestant's request for making retroactive an allowance of $1.50 per net ton for preparing scrap to smelter fluxing specifications. Protestant in the original protest had asked authority to collect this preparation charge for 3,048.33 tons shipped to United States Smelting, Refining & Mining Company between April 25, 1942, and February 10, 1943.

Maximum prices for iron and steel scrap were first established on April 3, 1941, in Price Schedule No. 4 issued by the Price Stabilization Division of the Advisory Commission to the Council of National Defense, which later became the Office of Price Administration and Civilian Supply. Pursuant to Section 206 of the Act that Schedule was republished in the Federal Register on February 21, 1942 (7 F. R. 1207), as Revised Price Schedule No. 4. On June 30, 1944, it was revised and amended and reissued as Maximum Price Regulation No. 4 (9 F. R. 7330). Section 1304.13 of Revised Price Schedule No. 4 contained specifications for No. 1 and No. 2 heavy melting steel, which now appear in Section 23 of Maximum Price Regulation No. 4, and which are set

forth in a footnote to the opinion accompanying the first denial of the protest (Tr. 14). It should be noted, however, that both Revised Price Schedule No. 4 and Maximum Price Regulation No. 4 contain a provision authorizing sellers of scrap to add to the price a charge for special scrap preparation only upon prior approval by the Office of Price Administration.

Protestant stated in the original protest that in April 1942 it was informed that smelting fluxing scrap must be priced as heavy melting steel scrap No. 1 or No. 2 and that soon thereafter it began informal negotiations with the Salt Lake City Office of the Office of Price Administration, seeking permission to charge a premium for preparing scrap to [fol. 67] smelter fluxing specifications.

Amendment No. 10 to Revised Price Schedule No. 4, issued on January 16, 1943, permitted an additional allowance of $1.50 per net ton for foundry steel, two feet and under; however, foundry steel as defined in the Schedule[1] also did not meet Protestant's specifications for smelter fluxing scrap, and therefore Protestant on January 28, 1944, requested permission from the Salt Lake City Office to charge the premium permitted by Amendment No. 10 to smelter scrap. The Salt Lake City office granted such authority on February 19, 1944 (Tr. 7), which was confirmed by the national office in a letter dated April 5, 1944 (Tr. 7). That individual authorization was made general by Section 3 (c) (2) of Maximum Price Regulation No. 4 in order to eliminate the necessity for obtaining prior approval for every individual seller (Tr. 26).

In the affidavit of Protestant's president submitted with the additional evidence filed on February 28, 1945, the statement is made that Protestant did not know prior to April 1942 that it was not permitted to add to the price fixed for heavy melting steel an extra charge for smelting fluxing scrap. Protestant admitted that from April 25,

[1] Foundry Steel, 2 feet and under, is defined in Section 23 of Maximum Price Regulation No. 4 as follows: *Foundry steel, 2 feet and under.* Steel scrap ⅛ inch and over in thickness, not over 2 feet in length or 18 inches in width. Individual pieces must be free from attachments. May not include nonferrous metals, metal coated material, cast or malleable iron, wrought iron, pipe, body and fender stock, cable, enameled or galvanized material.

1942, to February 10, 1943, it billed smelting fluxing scrap to the U. S. Smelting, Refining and Mining Company at a rate in excess of the then applicable maximum price, but stated that it did not collect the extra preparation charge (Tr. 5). Protestant now asserts that it believed at all times that the Office of Price Administration would recognize the inapplicability of heavy melting steel prices to smelting fluxing scrap and that it filed the protest only after it was advised that the relief granted had no retroactive effect.

It may be appropriate to add to this statement of facts a brief reference to an injunction proceeding brought by the [fol. 68] Administrator against Protestant on November 27, 1942, in the U. S. District Court for the District of Utah, Central Division, Civil Action No. 412, to restrain violations of Revised Price Schedule No. 4, including overcharges for smelting fluxing scrap delivered to U. S. Smelting, Refining and Mining Company. That proceeding was terminated on February 17, 1943 by the issuance of a consent decree restraining Protestant from selling or offering to sell scrap at prices above ceilings. (See Exhibit A to this opinion.)

In his opinion accompanying the first denial of the protest the Administrator explained why retroactive relief in general may not be permitted if price control is to be successful. If sellers of commodities subject to price regulation had before them the possibility of retroactive relief many sellers would be induced to circumvent or evade a maximum price regulation by inducing a buyer to pay more than the legal maximum price upon promise of refund if retroactive relief were not given. Such practices would encourage disregard of maximum price regulations.

Apart from the reasons outlined in the previous opinion, it must also be emphasized that the granting of retroactive relief to Protestant would unreasonably discriminate against other sellers of smelting fluxing scrap who complied with the provisions of the schedule and received, upon application, individual approval of a premium allowance; such individual adjustments were granted during the winter of 1944 to three other dealers in Utah, seven dealers in Montana, and one dealer in Texas. None of them had previously sold or offered to sell smelting fluxing scrap at prices in excess of established ceilings nor requested that such individual adjustment be made retroactive. The Administrator thus could not fairly grant the present protest without permitting other sellers to come forward with claims

for retroactive adjustments of shipments completed years ago. Obviously any such general reopening of the past would result in an unreasonable administrative burden. If the Administrator were required to follow such a practice, each adjustment or amendment would involve the almost impossible task of reexamining hundreds of bygone transactions; clearly this would prevent the proper discharge of [fol. 69] the Administrator's duties, which include the constant improvement of price control techniques.[2]

The Administrator recognizes, however, that under exceptional circumstances the equities on the part of the individual applicant for retroactive relief may outweigh the general considerations outlined above; for instance when the applicant's capital structure is impaired to such an extent that without retroactive relief he could not carry on his business. Since Protestant's president, in the affidavit which was attached to the application for leave to introduce evidence, asserted that without the retroactive relief sought in the protest, which amounts to $4,572.49 (Tr. 9), it would be unable to continue operations, the Administrator attempted by the order of January 27, 1945 to explore the facts of Protestant's financial condition. Analysis of the additional evidence shows, however, that in spite of losses sustained in 1942 and 1944 Protestant's capital structure is not only unimpaired, but entirely sound. Protestant's balance sheets for the years 1942, 1943, and 1944 show a surplus of $5,062.13, $3,979.19 and $2,857.03, respectively; during 1942 and 1943 dividends were paid on both common and preferred stock, in spite of over-all losses in 1942.[3] Significantly no dividends on common stock were paid from 1937 through 1939 although Protestant's operations during those years were profitable. Under these circumstances, it cannot reasonably be contended that denial of the relief requested, to-wit denial of authorization to collect $4,572.49 for preparation charges on smelting fluxing scrap shipped from April 25, 1942 to February 10, 1943, would seriously threaten Protestant's ability to carry on its business.

Protestant argues, nevertheless, that the price for heavy melting steel scrap was never reasonably applicable to scrap

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[2] *Foster* v. *Bowles*, 144 F. (2d) 870 (Em. App., 1944).

[3] Dividend payments in 1943 were in excess of the net profit before taxes earned during that year.

prepared to smelter specifications and that failure to allow a premium for the latter kind of scrap was arbitrary and capricious. However Protestant's evidence does not prove this contention. There is no showing that Protestant's operations are representative of the industry or that its [fol. 70] recent losses on scrap operation were due to the absence of the premium. It is true that Protestant's scrap operations during the last three years showed heavy losses;[4] however it is not shown that the total scrap losses during that period were attributable to sales of smelting fluxing scrap.

Protestant submitted a detailed cost breakdown purporting to show the results of its total operations during the period involved in the protest as compared to the results of the shipments made to U. S. Smelting, Refining and Mining Co. for which retroactive relief is requested. Assuming that Protestant's cost allocation could be accepted without qualification, it appears that on the shipments of fluxing scrap to U. S. Smelting, Refining and Mining Co. Protestant sustained a net loss of $16,967.15; the granting of the relief requested in the protest would thus reduce that loss by only 25%. In other words even if Protestant had received the extra allowance, its loss for these shipments would, according to its own figures, still amount to more than $12,000.

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[4] A comparison of Protestant's total net profits before taxes with the results of its scrap operations is as follows:

Period	Over-all profits before taxes	Results of scrap operations
1936	$3,059.97	$2,703.94
1937	3,454.76	3,868.53
1938	2,825.10	3,958.84
1939	4,129.93	245.64
1942	*5,984.60	*10,579.40
1943	1,444.13	*6,940.29
1944	*522.16	*5,260.60

* Red.

In addition the accuracy of Protestant's cost allocation may well be questioned.[5] For instance Protestant states that its material cost, presumably the cost of unprepared [fol. 71] heavy melting scrap, amounted to $8.45 per net ton. However the average purchase price paid by Protestant from May 1942 to January 1943 was only $7.62 per ton. This apparent discrepancy is not explained. There is also no adequate explanation as to the method of allocating selling and administrative expenses, labor and other costs. In view of the fact that fluxing scrap shipments during the period in question amounted to less than 30% of total volume it is hard to see why, for instance, half of all office and administrative expenses and almost two thirds of all indirect costs were allocated to fluxing scrap sales.

Protestant also submitted figures showing its purchase and selling prices per net ton of scrap iron during 1936 through 1939 and 1942-1944.[6] Unweighted yearly averages of Protestant's monthly figures are as follows:

Period	Purchase price	Sales price	Margin
1936	$4 71	$8 11	$3 40
1937	5 94	9 78	3 84
1938	4 61	8 9[illegible]	4 30
1939	5 12	9 32	4 20
1942	8 50	12 88	4 38
1943	7 76	12 88	5 12
1944	7 54	13 16	5 62

This tabulation demonstrates that Protestant's gross margin on scrap from 1942 to 1944 was considerably higher than during the base period of 1936 through 1939. No explanation has been offered why in spite of such increase of gross margin the formerly profitable scrap operations became unprofitable.

From what has been said it follows that Protestant has not only failed to prove that without an allowance for prepara-

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[5] It does not appear whether Protestant's figures for the period April 1942 to February 1943 reflect an allowance for freight charges payable by U. S. Smelting, Refining and Mining Company. In the protest Protestant had requested authority to collect freight charges from that Company (Tr. 9). In his first opinion accompanying the denial of the protest the Administrator stated that "nothing in the Regulation prevents Protestant from accepting reimbursement for proper freight charges" (Tr. 18).

tion charges for smelting fluxing scrap the Regulation was invalid, but has also failed to demonstrate that its own losses on scrap operations were mainly due to the absence of such an allowance. In this connection it should be noted that the problem of a preparation charge for smelting fluxing scrap was considered by the Industry Advisory Committee appointed pursuant to Section 2 (a) of the Act at a meeting held in September, 1943; the Committee felt at that time that this was a relatively minor problem and recommended that it should be handled on an individual basis. [fol. 72] Accordingly on December 21, 1943 the Iron and Steel Price Branch of the Office of Price Administration authorized the Regional Office in Denver, Colorado, whose jurisdiction includes the State of Utah, to permit, upon individual application, under Section 1304.13 (a) (5) of Revised Price Schedule No. 4 a premium of $1.50 for preparation and cutting No. 2 heavy melting steel scrap to smelter specifications. Authority to grant individual adjustments relating to this preparation charge was thus delegated to the field offices of the Office of Price Administration, and in accordance with that delegation Protestant early in 1944 was granted such an adjustment. Under these circumstances the granting of such an adjustment could not reasonably be construed as an admission of illegality of the previous price. In fact Protestant admitted that the problem was of significance only in Protestant's section of the country (Tr. 4). That Maximum Price Regulation No. 4 now dispenses with the requirement of individual applications by sellers of smelting fluxing scrap does not affect this conclusion; the new regulation merely made the adjustment provision general for all sellers of that specification, thus utilizing the experience gained in the administration of scrap price control for the purpose of simplifying compliance.

Finally reference must be made to Protestant's allegations that during the extended period of its discussions with the Salt Lake City office it believed in good faith that relief would be forthcoming with regard to its request for a price premium. If these allegations purport to indicate that Protestant was misled by promises of relief, they are without foundation. In 1942 and 1943 the officials of the Salt Lake City office advised the Protestant repeatedly that they had no authority whatsoever to grant requests for price increases and that relief could be granted only by the Price Administrator in Washington; they even suggested that

Protestant communicate with other scrap dealers in the Salt Lake City area and file a joint petition for relief. However, Protestant during those two years never availed itself of any of the administrative procedures provided for [fol. 73] applicants seeking price increases.[6] It was only after authority had been delegated to the field offices to handle individual applications that Protestant in January 1944 filed a formal request with the Salt Lake City Office, which was promptly and favorably acted upon.

For the reasons stated above the protest must be denied upon reconsideration.

Issued and effective this 4th day of April 1945.

(Sgd.) Chester Bowles, Administrator.

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[6] In November 1942 U. S. Smelting, Refining and Mining Company filed with the Secretary of the Office of Price Administration a formal petition for amendment of Revised Price Schedule No. 4 (Docket No. 3004-15) *to which was attached an affidavit from Protestant's president.* The petition requested permission to pay to Protestant and others an extra fee for smelting fluxing scrap. It was denied by the Administrator in January 1943 on the ground that the specifications for foundry steel, 1 foot and under, established by Amendment No. 10 to Revised Price Schedule No. 4, were substantially in accordance with the requirements outlined in the petition. It is reasonable to assume that Protestant received notice of this denial; yet it failed to take any further steps by protest or otherwise, to bring to the Administrator's attention the facts showing that Amendment No. 10 did not satisfy the requirements for smelting fluxing scrap. It was only after further investigation and after consultation with the Industry Advisory Committee that the Administrator recognized the appropriateness of authorizing additional adjustments. It may be noted that the iron and steel scrap industry is enormously complicated from the point of view of price control, and that any change in differentials or premiums had to be carefully weighed lest it result in dislocation of supply.

[fol. 74] EXHIBIT "A" TO OPINION

DISTRICT COURT OF THE UNITED STATES OF AMERICA FOR THE DISTRICT OF UTAH CENTRAL DIVISION

Civil Action No. 412

LEON HENDERSON, Administrator Office of Price Administration, Plaintiff

v.

THE UTAH JUNK COMPANY, a Corporation, Defendant

DECREE

Leon Henderson, Administrator of the Office of Price Administration, having filed his complaint herein on the twenty-seventh day of November 1942, and the defendant having appeared and answered such complaint, denying the substantive allegations thereof and Prentiss M. Brown, Price Administrator of the Office of Price Administration having been duly substituted as plaintiff herein in the place of Leon Henderson resigned; both parties hereto by their respective attorneys herein having severally consented to entry of this final decree herein without trial or adjudication of any issue of fact or law herein and without admission by any party in respect of any such issue;

Now, therefore, before any testimony has been taken herein and without trial or adjudication of any issue of fact or law herein and upon consent of all parties hereto,

It is hereby ordered, adjudged, and decreed: That defendant, its agents, servants, employees, attorneys, and all persons in active concert or participation with said defendant, be and they hereby are, enjoined and restrained from:

(a) Directly or indirectly selling, offering to sell, delivering or transferring any iron or steel scrap to a broker or consumer thereof at prices in excess of the maximum prices established by Revised Price Schedule No. 4, as amended, [fol. 75] issued pursuant to Section 2 (a) of the Emergency Price Control Act of 1942 (Pub. L. No. 421, 77th Cong., 2d Sess., C. 26), or otherwise violating or attempting or agreeing to do anything in violation thereof or in violation of any

regulation or order adopted pursuant to said Section, establishing maximum prices for iron and steel scrap;

(b) Failing to keep for inspection by the Office of Price Administration for a period of not less than one year, as required by Section 1304.8 (b) of Revised Price Schedule No. 4 issued pursuant to Section 2 (a) of the Emergency Price Control Act of 1942 (Pub. L. No. 421, 77th Cong., 2d Sess., C. 26), complete and accurate records of each transaction in iron and steel scrap for which maximum prices are established by said Price Schedule, or otherwise violating or attempting or agreeing to do anything in violation thereof, or in violation of any regulation or order adopted pursuant to said Section, requiring the making or keeping of records or the making of reports;

(c) Failing to execute and mail, simultaneously with the shipment by rail of iron and steel scrap to consumers or brokers thereof, shipping notices containing the specific grade or grades of scrap, as required by Section 1304.8 (c) of Revised Price Schedule No. 4, as amended, issued pursuant to Section 2 (a) of the Emergency Price Control Act of 1942 (Pub. L. No. 421, 77th Cong., 2d Sess., C. 26), or otherwise violating or attempting or agreeing to do anything in violation thereof or in violation of any regulation or order adopted pursuant to said Section, requiring the execution or mailing of shipping notices;

(d) Charging or receiving for brokerage services rendered to a consumer in the purchase of iron and steel scrap, commissions in excess of the maximum commission established by Section 1304.6 of Revised Price Schedule No. 4, as amended, issued pursuant to Section 2 (a) of the Emergency Price Control Act of 1942 (Pub. L. No. 421, 77th Cong., 2d Sess., C. 26), or otherwise violating or attempting or agreeing to do anything in violation thereof or in violation of any regulation or order adopted pursuant to said Section, establishing maximum commissions for such brokerage services.

Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this decree to apply to the Court at any time for such further orders and directions [fol. 76] as may be necessary or appropriate for the construction or carrying out of this decree, for the modification

thereof or enforcement or compliance therewith, and for the punishment of violations thereof.

Entered:

(Sgd.) T. Blake Kennedey, District Judge.

Dated at Salt Lake City, Utah, February 17, 1942.

We hereby consent to the entry of the foregoing decree.

(Sgd.) John A. Carroll, John W. Porter, E. J. Scheunemann, George A. Cutler, Richard L. Bird, Jr., Attofneys for Prentiss M. Brown, Administrator, Office of Price Administration.

We hereby consent to the entry of the foregoing decree.

(Sgd.) Robert L. Judd, Paul H. Ray, S. J. Quinney, A. H. Nebeker, Attorneys for Utah Junk Company.

[fol. 77] Administrator's Certificate to foregoing supplemental transcript omitted in printing.

[fol. 78] [Stamp:] United States Emergency Court of Appeals. Filed Nov. 20, 1944. Herman C. Beasley, Clerk

IN THE UNITED STATES EMERGENCY COURT OF APPEALS

No. 184

UTAH JUNK COMPANY, a Corporation, Complainant,

v.

CHESTER BOWLES, Price Administrator, Respondent

COMPLAINT

1. The complainant is Utah Junk Company, a corporation organized under the laws of the State of Utah. Its principal address is 850 South 4th West, Salt Lake City, Utah.

2. The complainant protests against the application of the provisions of Section 1304.13 of Revised Price Schedule No. 4, establishing maximum prices for sales of No. 1 and No. 2 heavy melting steel, to sales of smelting fluxing scrap made by complainant to United States Smelting, Refining and Mining Company between April 25, 1942 and February 10, 1943. Section 1304.13 of Schedule 4 was first issued on April 2, 1941. Notice that maximum prices fixed by that section for No. 1 and No. 2 heavy melting steel were regarded as applicable to sales of smelting fluxing scrap made by complainant to the said Company was received by complainant from the Office of Price Administration on or about April 25, 1942.

3. Promptly thereafter, commencing in the month of May, 1942, the complainant began negotiations with the Office of Price Administration, contending that smelting fluxing scrap of the character sold by it was not within the category of heavy melting steel No. 1 and No. 2 as described in said Section 1304.13 and that, therefore, the maximum price fixed for such steel was not reasonably applicable to the smelting fluxing scrap sold by the complainant. The same inapplicability continued to be asserted by complainant in negotiations with the Office of Price Administration, and by orders issued on June 3, 1943 and April 5, 1944 the

[fol. 79] Office of Price Administration recognized the inapplicability to sales of smelting fluxing scrap of the maximum prices fixed by Section 1304.13 for No. 1 and No. 2 heavy melting steel and by such orders allowed, prospectively, sale of smelting fluxing scrap at a prices $1.50 per ton above the price fixed for heavy melting steel but denied right in the complainant to collect such additional $1.50 per ton on sales theretofore made to United States Smelting, Refining and Mining Company between April 25, 1942 and February 10, 1943. Formal protest by Complainant was filed on August 7, 1944 and denied by respondent on October 20, 1944.

4. Between April 25, 1942 and February 10, 1943, complainant delivered to United States Smelting, Refining and Mining Company 3048.33 gross tons of smelting fluxing scrap for which it has been paid only the maximum price for No. 1 and No. 2 heavy melting steel prescribed by Section 1304.13, above mentioned. Scrap of the character thus delivered by complainant is used in lead blast furnaces and is required to be prepared to unusual specifications involving labor and equipment over and above that involved in preparing heavy melting steel. The complainant incurred additional expense in preparing the said smelting fluxing scrap to the unusual specifications, and the Office of Price Administration now recognizes that a fair allowance for such additional expense is $1.50 per ton. The United States Smelting, Refining and Mining Company is ready, able and willing to pay complainant an additional $1.50 per ton for the 3048.33 tons of smelting fluxing scrap delivered to it between April 25, 1942 and February 10, 1943, except for respondent's denial of the complainant's protest, holding in effect that such payment would be illegal. The price fixed for No. 1 and No. 2 heavy melting steel is below the cost of production of smelting fluxing scrap so that in delivering said 3048.33 tons of smelting fluxing scrap at the price fixed for heavy melting steel the complainant has sustained a loss unless it collects the $1.50 [fol. 80] per ton above referred to as the cost of processing, and such collection is necessary to maintain the solvency of complainant's business.

5. In its protest filed in the Office of Price Administration the complainant objected and now objects that the

maximum price for heavy melting steel was never properly applicable to its sales of smelting fluxing scrap to the United States Smelting, Refining and Mining Company because:

(a) The specifications for heavy melting steel No. 1 and No. 2 set forth in Section 1304.13 of Revised Price Schedule No. 4 were prepared for application to the steel industry which uses heavy melting steel of the character described in the price schedule, but without thought of lead blast furnaces which use smelting fluxing scrap of the character sold by complainant, and that such specifications in Section 1304.13 were not intended to govern smelting fluxing scrap.

(b) Under the specifications for heavy melting steel contained in said Section 1304.13 the pieces thereof may be as large as 18 inches in width by 5 feet in length. Smelting fluxing scrap is required to be in pieces not exceeding 12 inches in width by 24 inches in length. By reason of the added expense of labor and equipment required to prepare scrap to these smaller specifications the final product is not reasonably comparable to heavy melting steel and the maximum price for the latter is not reasonably applicable as the maximum price for the former.

(c) The area in which the complainant operates is sparsely settled and available supplies of scrap are correspondingly small so that it is impossible to select from available stock scrap of the proper size to meet the requirements for smelting fluxing scrap and, therefore, such requirements can be met in the area of complainant's operation only by cutting and otherwise preparing larger scrap suitable without preparing for heavy melting steel but not suitable without additional preparation for smelting fluxing scrap.

(d) The business of operating lead blast furnaces in the area of complainant's operation as well as the businesses [fol. 81] of complainant and similarly situated scrap dealers has for a long time been adjusted to an increased price for smelting fluxing scrap over the price for scrap steel suitable for heavy melting steel, the increased price reflecting the cost of preparing smelting fluxing scrap. Complainant's adjustment to this long standing practice has consisted in part in obtaining special equipment and in

training personnel for gathering and preparing smelting fluxing scrap.

Wherefore, your complainant prays:

1. That the maximum prices for No. 1 and No. 2 heavy melting steel prescribed in Section 1304.13 of Revised Price Schedule No. 4 be held inapplicable to its sales of smelting fluxing scrap to the United States Smelting, Refining and Mining Company between April 25, 1942 and February 10, 1943.

2. That the complainant be authorized to receive from the United States Smelting, Refining and Mining Company $1.50 per ton over and above the said price fixed for heavy melting steel No. 1 and No. 2 for the same period for each of the 3048.33 tons of smelting fluxing scrap delivered by complainant to the Company between April 25, 1942 and February 10, 1943.

Ernest L. Wilkinson, Keith L. Seegmiller, Attorneys for Complainant, by Keith L. Seegmiller, 1343 H Street, N. W.

[fol. 82] [File endorsement omitted.]

[fol. 83] IN THE UNITED STATES EMERGENCY COURT OF APPEALS

[Title omitted]

ANSWER—Filed December 13, 1944

Now comes Chester Bowles, Price Administrator, Respondent, by his duly authorized attorney, and pursuant to Rule 16 of the Rules of this Court, answers to the complaint of Utah Junk Company, a corporation, Complainant, as follows:

For the purposes of the proceedings on this complaint, Respondent admits or denies or otherwise pleads to the allegations of the complaint as follows:

(1) Respondent admits the allegations in Section 1 of the complaint.

(2) Respondent admits the allegations in Section 2 of the complaint, except that Respondent denies that notice that maximum prices fixed by Section 1304.13 of Revised Price Schedule No. 4 for No. 1 and No. 2 heavy melting steel were regarded as applicable to sales of smelting fluxing scrap made by Complainant to United States Smelting, [fol. 84] Refining and Mining Company was first received by Complainant from the Office of Price Administration on or about April 25, 1942.

(3) With respect to the allegations in Section 3 of the complaint, Respondent pleads as follows:

(a) Respondent admits that in May 1942 Complainant commenced informal negotiations with the Salt Lake City office of the Office of Price Administration, contending that smelting fluxing scrap of the character sold by Complainant was not within the category of heavy melting steel scrap No. 1 and No. 2 as described in Revised Price Schedule No. 4, and further contending that the maximum price fixed for such heavy melting steel scrap was not reasonably applicable to the smelting fluxing scrap sold by Complainant.

(b) Respondent denies that the Office of Price Administration, by orders issued on June 3, 1943, and April 5, 1944,

recognized the inapplicability to sales of smelting fluxing scrap of the maximum prices fixed for No. 1 and No. 2 heavy melting steel. Respondent states affirmatively that Complainant's allegations with regard to the allowance of a charge of $1.50 per ton on sales of smelting fluxing scrap do not accurately describe the action taken by the Office of Price Administration. Respondent further states that on June 3, 1943, the Salt Lake City office of the Office of Price Administration, in a letter the text of which is set forth in the protest, called Complainant's attention to certain amendments to Revised Price Schedule No. 4, particularly to a premium allowance of $1.50 and $2.00 per ton over and above the maximum price of No. 1 heavy melting [fol. 85] steel for sales of "foundry steel," a new scrap grade specification.[1] Respondent further states that after the issuance of the amendments referred to complainant indicated to the Salt Lake City office that the amended specifications were still not satisfactory for its operations; that Complainant thereafter, pursuant to Section 1304.13 (a) (5) of Revised Price Schedule No. 4, requested permission to charge $1.50 per gross ton in addition to the maximum price of heavy melting steel scrap for its special preparation of such scrap to smelter specifications, and that such permission was granted to Complainant by the Salt Lake City office of the Office of Price Administration on February 19, 1944, and confirmed by the National Office of the Office of Price Administration by letter dated April 5, 1944, which letter is set forth in the protest.

(c) Respondent admits that such permission granted to Complainant by the Salt Lake City office and confirmed by the National Office was prospective only and had no retroactive effect. Respondent states affirmatively that the relief requested in the protest referred solely to the retroactive application of such permission to certain sales made by Complainant to United States Smelting, Refining and Mining Company between April 25, 1942 and February 10, 1943.

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[1] Those premiums and new specifications were provided by Amendment No. 10 to Revised Price Schedule No. 4, issued January 16, 1943 (8 F. R. 857). The letter from the Salt Lake City office and the Administrator's opinion accompanying the denial of the protest erroneously refer to Amendment No. 12, issued May 29, 1943.

(d) Respondent admits that Complainant's protest was [fol. 86] filed on August 7, 1944, and denied on October 20, 1944.

(4) With respect to the allegations in Section 4 of the complaint, Respondent pleads as follows:

(a) Respondent denies that scrap of the character delivered by Complainant to United States Smelting, Refining and Mining Company between April 1942 and February 1943 is required to be prepared to specifications involving equipment over and above that involved in preparing heavy melting steel.

(b) With respect to the allegation concerning the allowance of $1.50 per ton now permitted by the Office of Price Administration for the expenses involved in preparing smelting fluxing scrap Respondent states that such additional allowance was granted to Complainant and several other members of the industry upon their individual applications pursuant to Section 1304.13 (a) (5) of Revised Price Schedule No. 4, requesting authorization to charge such allowance. Respondent further states that on June 30, 1944, Revised Price Schedule No. 4 was amended and reissued as Maximum Price Regulation No. 4 (9 F. R. 7330), and that Section 3 (c) (2) thereof generally provides for such preparation charge.

(c) Respondent denies that the price fixed for No. 1 and No. 2 heavy melting steel is below the cost of production of smelting fluxing scrap, and Respondent denies that Complainant, in delivering 3,048.33 tons of smelting fluxing scrap at the price fixed for heavy melting steel, sustained a loss unless it may now collect the allowance of $1.50 per [fol. 87] ton as the cost of processing. Respondent also denies that such collection is necessary to maintain the solvency of Complainant's business; Respondent states affirmatively that Complainant in its protest did not adduce any evidence as to its cost and general financial condition.

(d) Respondent admits the other allegations in Section 4 of the complaint.

(5) With respect to the allegations in Section 5 of the complaint, Respondent pleads as follows:

(a) Respondent denies that the maximum price for heavy melting steel was never properly applicable to Complain-

ant's sales of smelting fluxing scrap to United States Smelting, Refining and Mining Company.

(b) Respondent denies that the specifications for heavy melting steel were prepared without thought of lead blast furnaces which use smelting fluxing scrap of the character sold by Complainant and denies that such specifications were not intended to govern smelting fluxing scrap.

(c) Respondent denies that added equipment is required to prepare scrap to smaller specifications, and denies that Complainant's final product is not reasonably comparable to heavy melting steel, and denies that the maximum price for the latter was not reasonably applicable as the maximum price for the former.

(d) Respondent denies that in the area in which Complainant operates, it is impossible to select from available stock scrap of the proper size to meet the requirements for smelting fluxing scrap and that such requirements can be met only by preparing larger scrap. Respondent admits [fol. 88] that in Complainant's area it may be more difficult than in other areas to select from available stock scrap of the proper size required for smelting fluxing scrap.

(e) Respondent states that Complainant has failed to adduce any evidence showing that for a long time it has been receiving increased prices for smelting fluxing scrap over the price of scrap suitable for heavy melting steel; Respondent denies that Complainant has been obtaining special equipment and training personnel for gathering and preparing smelting fluxing scrap, and denies that special equipment and training of personnel is necessary for gathering and preparing smelting fluxing scrap.

(f) Respondent admits the other allegations in Section 5 of the complaint.

(6) With regard to the prayer for relief, Respondent states that this Court has no jurisdiction to fix the price at which Complainant at any time could sell scrap to the United States Smelting, Refining and Mining Company.

Wherefore Respondent prays that the complaint be dismissed.

Respectfully submitted, Richard H. Field, General Counsel.

[fol. 89] [Stamp:] United States Emergency Court of Appeals. Filed Dec. 21, 1944. Herman C. Beasley, Clerk

IN THE UNITED STATES EMERGENCY COURT OF APPEALS

No. 184

UTAH JUNK COMPANY, a Corporation, Complainant,

vs.

CHESTER BOWLES, Price Administrator, Respondent

MOTION FOR EXTENSION OF TIME

Comes now the complainant in the above named case, by the undersigned attorney, and moves for an order extending the time in which an application may be filed to introduce additional evidence in the above named case to January 10, 1945.

Keith L. Seegmiller, Attorney for Complainant.

No Objection. Nathaniel L. Nathanson, Attorney for Respondent.

ORDER EXTENDING TIME

It is hereby ordered that the time within which an application may be filed for leave to introduce additional evidence in the above named case be and hereby is extended to January 10, 1945.

——, Judge.

[fol. 90] [Stamp:] United States Emergency Court of Appeals. Filed Dec. 21, 1944. Herman C. Beasley, Clerk

UNITED STATES EMERGENCY COURT OF APPEALS

No. 184

UTAH JUNK COMPANY, a Corporation, Complainant,

v.

CHESTER BOWLES, Price Administrator, Respondent

ORDER

Upon consideration of Complainant's motion for enlargement of time to January 10, 1945, in which an application may be filed for leave to introduce additional evidence in the above entitled case, and counsel for Respondent having stated that he has no objection to the enlargement,

It is Ordered that Complainant's motion be, and it hereby is, granted.

By the Chief Judge.

Teste: Herman C. Beasley.

December 21, 1944.

[fol. 94] [Stamp:] United States Emergency Court of Appeals. Filed Jan. 10, 1945. Herman C. Beasley, Clerk

IN THE UNITED STATES EMERGENCY COURT OF APPEALS

No. 184

UTAH JUNK COMPANY, a Corporation, Complainant,

vs.

CHESTER BOWLES, Price Administrator, Respondent

APPLICATION FOR LEAVE TO INTRODUCE EVIDENCE

Comes now the complainant in the above named case and applies for leave to introduce additional evidence in the form of an affidavit of L. D. Foreman, attached hereto and

made a part hereof. Said additional evidence is offered to show:

1. A satisfactory explanation of complainant's failure to file its protest earlier and its compliance with instructions of the Office of Price Administration that the maximum prices for No. 1 and No. 2 heavy melting steel were applicable to fluxing scrap sold by complainant (see affidavit pp. 1-3, 5).

2. That the production of fluxing scrap in the area of complainant's operations involves processing by means of special equipment and specially trained personnel and extra work and effort not involved in the production of said heavy melting steel and that, therefore, for a long time prior to the date of issuance of the price regulation involved in this case, and at all times since that date, there has been a well-recognized distinction in the industry between melting steel and fluxing scrap and an established price differential between them (see affidavit pp. 2-3).

3. That sales of fluxing scrap made by complainant at the maximum price fixed for heavy melting steel were sales below the cost of production and, therefore, at substantial loss to the complainant and that such loss has seriously impaired the financial structure of the complainant's business (see affidavit pp. 4-5).

Reasons in Support of the Application

There was no reasonable opportunity to introduce any of [fol. 92] the evidence here offered in the proceedings before the administrator. Complainant's protest filed with the Administrator was under oath (R. 10-11) and, we submit, the allegations therein were properly regarded by complainant as presumptively true, needing no proof to support them in the absence of denial of them. There was nothing in the nature of an answer in the administrative proceedings and, until receipt of the opinion denying the protest, complainant had neither knowledge nor means of knowing which of his allegations of fact were admitted or denied. No opportunity was afforded, as the statute permits (50 U. S. C. 923(a)), to present evidence in support of any allegation denied by the Administrator. Nor did the order denying the protest (R. 12) include leave to petition for reconsideration as is permitted by regulation

(Rev. PR 1 Section 53). Complainant could not reasonably have been expected to support his protest with proof of every allegation in it. Yet in his opinion denying the protest the administrator seems to deny that there is any tendency in the protest itself, although it was under oath, to establish anything, and upon that view there is no proof of anything in the record and no fair basis whatever for passing upon the protest either in the Administration or here.

In the proceedings in the Administration complainant adhered to standard procedure, relying upon statutory provision for an opportunity to present evidence of facts denied (50 U. S. C. 923(a)) and believing that such provision would be invoked in his favor in the event his allegations of fact were denied by the Administrator. The clear purpose of the statute would seem to have been that of affording opportunity to present proof whenever allegations of fact were denied. The statute requires the Administrator to deny a protest (presumably if all the facts alleged even if true would not warrant the relief sought) or afford an opportunity to present additional evidence (presumably in the event of denial of allegations of fact sufficient if true to warrant the relief sought).

The intention of Congress in this respect has now been made clear we believe by legislation insuring full and ade- [fol. 93] quate administrative hearings on protests filed after September 1, 1944 (50 U. S. C. 923(c); section 203(c) of the Price Control Act of 1942 as amended June 30, 1944). Neither the ordinary standards of fair trial nor the manifest purpose of Congress would be achieved if complainant's rights were to be adjudicated upon the grounds set forth by the Administrator that there is "no satisfactory explanation" and "no evidence in support of the charge" (R. 17), although the matters thus waved aside had been fully explained in the protest under oath.

Complainant had no reason to believe that its allegations concerning negotiations with the Office of Price Administration, well known to the respondent, would be denied (answer par. 2 pp. 1-2) and, therefore, that delay in filing its protest and its compliance with the administrative ruling would be regarded as affecting its position adversely (see opinion of Administrator, R. 14, 17). Complainant's conduct in this respect was not only reasonable and normal, but laudable under the circumstances, being in effect only

continued production of a vital war material pending adjustment of an improper price schedule. Evidence to explain complainant's delay and compliance is essential to proper disposition of the case to negative the inference that complainant's standing to claim the relief sought is weakened by acquiescence and delay.

The Administrator is authorized by statute to obtain such information as he deems necessary or proper to assist him in prescribing any regulation (50 U. S. C. 922(a)) and in passing upon any protest he may take official notice of economic data and other facts found by him (50 U. S. C. 923(c)). Complainant was properly of the view, we believe, that its allegation that the maximum price for heavy melting steel was fixed without consideration of peculiar requirements of the smelting business would be admitted or that economic data and other information obtained by the administrator and considered in prescribing price schedules for the smelting business would be produced. No statement of considerations or other economic data underlying the application to fluxing scrap of the minimum price for melting steel is relied upon by the respondent. Apparently there was no such information available to the Administra[fol. 94] tor when the protest in this case was denied and by means of the evidence offered in support of the second point listed above, we seek to supply the deficiency. That evidence is essential to the proper disposition of the case since without it there is no foundation whatever for determining whether the price schedules here protested were reasonably applicable.

Complainant based its protest upon the ground that the maximum price for heavy melting steel was never reasonably applicable to fluxing scrap (R. 1-2). From the beginning its position has been that application of the maximum price of melting steel to fluxing scrap was unreasonable and arbitrary and therefore invalid (Compare the answer par. 3(a) p. 2). If that be true there was never any valid restriction upon complainant's sales of fluxing scrap to the maximum price complained of here. Yet the Administrator apparently assumed without deciding that the price for melting steel was validly applied to fluxing scrap and denied the protest upon the ground that the relief sought is retroactive and if granted would be inflationary. Upon the question of inflationary tendency thus raised by the respondent, evidence to show the financial status of complainant's busi-

ness is essential to proper disposition of the case since the true evidence will show that complainant would only use the money sought to pay its debts incurred by reason of losses in the production of fluxing scrap. This evidence could not reasonably have been introduced in the administrative proceedings since complainant raised no question of retroactive relief and was unaware until it received the opinion denying the protest of the raising of such questions by the respondent.

Ernest L. Wilkinson, Keith L. Seegmiller, Counsel for Complainant, by Keith L. Seegmiller.

[fol. 95] AFFIDAVIT

STATE OF UTAH,
County of Salt Lake, ss:

L. D. Foreman, being first duly sworn upon his oath deposes and says: That he is a citizen of the State of Utah, over the age of 21 years; that he is and has been during all of the times herein referred to President of Utah Junk Company, a corporation of the State of Utah, which company is complainant in that certain proceeding in the United States Emergency Court of Appeals identified as Case No. 184.

Affiant further says that Utah Junk Company is and has been for many years engaged in the collection, sale and distribution of scrap metal including scrap iron and during the present war and prior thereto sold scrap iron to United States Smelting, Refining & Mining Company for use as a fluxing agent in its lead blast furnaces at Midvale, Utah. In this connection affiant says that the area surrounding Salt Lake City is sparsely settled and the amount of scrap metal available at any point at any particular time is relatively small; that in order to acquire and assemble sufficient scrap to meet the needs of Utah Junk Company and its customers it was necessary to cover a wide area and to accept and ship whatever scrap was available without regard to the size of the pieces; that Utah Junk Company acquired the electric shears and torches and personnel able to use and employ such equipment for the purpose of cutting and preparing such scrap metal to meet the specification of its customers.

Affiant says that prior to the war and up to the occurrences hereinafter referred to, Utah Junk Company fur-

nished practically all the fluxing requirements of the lead blast furnaces at the Midvale plant of United States Smelting, Refining & Mining Company. Following the beginning of the war and up to and including the 25th day of April, 1942, Utah Junk Company continued to gather scrap metal, prepare the same to sizes needed for lead blast furnace fluxing and to charge therefor prices agreed upon between the Junk Company and the Smelting Company.

Affiant says that on or about April 25, 1942 one R. W. Durgantz, a representative of the Office of Price Administration from Denver, visited the Offices of Utah Junk Company and inspected the books and records of said company. At said time the said Durgantz informed affiant and Utah Junk Company that regulations fixing ceiling prices for [fol. 96] No. 1 and No. 2 heavy melting steel were applicable to shipments of scrap metal made and sold by Utah Junk Company to United States Smelting, Refining & Mining Company and that no charge in excess of the maximum prices fixed by said regulations could be made. Affiant further says that on about the 25th day of April, 1942 the said Durgantz also informed the United States Smelting, Refining & Mining Company that it could not lawfully pay the Utah Junk Company for scrap metal shipped to it for use in its lead blast furnaces any price or prices except those fixed by the Office of Price Administration for No. 1 and No. 2 heavy melting steel. Affiant says that that was the first time he or the Utah Junk Company had any knowledge or information that any claim would be made that No. 1 and No. 2 heavy melting steel prices would be applied to lead smelter fluxing scrap.

Affiant further says that at said time United States Smelting, Refining & Mining Company was not equipped to gather and assemble fluxing scrap nor was it possessed of the labor or equipment with which to prepare scrap metal for use in lead blast furnaces. Affiant further says that heavy melting steel may be used in steel mills in pieces 24" x 60", whereas, before scrap can be used for fluxing purposes in lead blast furnaces it must be cut to sizes approximately 12" x 24".

Affiant further says that following the information received from Mr. Durgantz, officials of the United States Smelting, Refining & Mining Company informed affiant that it would be cheaper and generally more economical for it to pay Utah Junk Company the prices agreed upon than

to buy heavy melting steel and prepare the same in its own yards to the size required for fluxing lead blast furnaces. This affiant together with officials of the United States Smelting, Refining & Mining Company continued negotiations with the local office of the Office of Price Administration hoping that they might persuade the local office that heavy melting steel regulations were not applicable to lead smelter fluxing scrap. Believing that recognition that heavy melting steel regulations would not be held applicable, Utah Junk Company continued to ship scrap in large quantities from April 25, 1942 to and including February 10, 1943. On all such shipments Utah Junk Company billed the Smelting Company at prices higher than those fixed by heavy melting steel regulations but did not collect or attempt to collect any sums in addition to those permitted by the heavy melting steel regulations.

During all of said period affiant believed in good faith that recognition would come from the Office of Price Administration that heavy melting steel regulations were not applicable and were not intended to be applicable to scrap prepared for sale to and use by the Smelting Company. During said period many conferences were held with representatives of the Office of Price Administration and efforts were made to get all scrap dealers in Salt Lake City and vicinity to agree upon specifications and regulations which would suit the sale of scrap for smelting purposes. No such agreement was reached, but in May of 1943 affiant was in [fol. 97] formed by the Office of Price Administration that $1.50 a ton preparation charge would be allowed over and above the price of heavy melting steel if the quality of the scrap sold conformed to the specifications for foundry steel. Affiant construed such allowance as partial recognition at least on the part of the Office of Price Administration that lead blast furnace scrap was not embraced within the regulations covering heavy melting steel. Affiant says that following such allowance he continued to negotiate with the Salt Lake office of the Office of Price Administration seeking to get a clear-cut recognition that heavy melting steel regulations did not cover smelting scrap and that it was and always had been entitled to a special specification and regulation. Again negotiations continued with the Salt Lake office and again efforts were made to get all scrap dealers in agreement upon a specification to fit and cover smelter fluxing scrap. No agreement could be reached, but on April 5, 1944

the Office of Price Administration announced a specification for lead blast furnace fluxing scrap and allowed a preparation charge of $1.50 per gross ton for such material.

Affiant further says that scrap sold to United States Smelting, Refining & Mining Company, and particularly that covered by the Utah-Junk Company's complaint in this case, is required to be prepared to the unusual specifications needed by the Smelting Company and covered by the order of April 5, 1944. While pieces of scrap 24" x 60" and suitable in steel mills, the requirements of the lead smelting industry are such that scrap must be cut to sizes approximately 12" x 24"; or less, as any larger pieces would be a detriment to the smelting process rather than an aid. Affiant further says that while the equipment and personnel used and employed to prepare scrap for lead smelting purposes could be used in the preparation of scrap to meet the specifications of heavy melting steel, nevertheless the amount of shearing and torching to produce the small sizes required by smelting companies is much greater than would be required to prepare scrap for steel furnaces and the cost therefore is much greater.

Affiant further says that while the war created an artificial demand for scrap of all kinds for approximately a year prior to December 7, 1941, nevertheless, the Utah-Junk Company traditionally sold unprepared scrap at a price not less than $4 per gross ton below that charged for prepared scrap. Affiant further says that during the period between April 25, 1942 and February 10, 1943 the average cost of preparing scrap to specifications required for smelter purposes was $8.47. During said period an allowance was made of $3.50 per ton for preparing miscellaneous scrap to specifications set forth in heavy melting steel regulations. From and after June 3, 1943 an additional $1.50 was allowed for the further preparation of miscellaneous and heavy melting steel to the smaller specifications required by the smelting industry, making [fol. 98] total allowance of $5.00 per ton. This total allowance was and is approximately $3.50 below the cost of preparation.

Affiant further says that during the year 1942 Utah-Junk Company suffered a loss of $10,579.40 on its total operations and that practically all of said loss was suffered on account of the scrap iron department of its business.

In 1943 the Utah Junk Company had a total profit of $560.05; and in 1944, to and including October 31st, the Utah Junk Company has suffered a loss on its business of $1133.20. Affiant says that departments of its business involving material other than scrap iron have shown some profit since April 25, 1942, but such profits have, except for the year 1943, been entirely overcome by losses on account of its scrap iron business. Affiant further says that because Utah Junk Company has been unable to sell scrap to smelting companies, except at a loss, the smelting companies have been driven to the collection and accumulation of scrap metal and the preparation thereof to required specifications with the result that Utah Junk Company and others similarly situated have been practically driven out of the smelter scrap business in this area, to the permanent injury of the business of Utah Junk Company. This damage to the business of Utah Junk Company has been aggravated by the fact that regulations by the Office of Price Administration allow the smelting companies to absorb freight on scrap iron from outlying territory, whereas, Utah Junk Company and dealers similarly situated have been denied the right to absorb such freight.

If the relief sought by Utah Junk Company in its complaint on file herein is granted, it will cover only a small part of the loss suffered by Utah Junk Company on the shipments made but it will give some financial relief for future operations. Utah Junk Company has continued its business during the last three years at a net loss and may be able to continue in a precarious condition in the future, but the losses already sustained in 1942 and 1944 and with the insignificant profit made in 1943 the Company is in serious need of the relief herein sought if it is to continue to perform the service which it has in the past performed. Even if the relief is granted as prayed in the complaint on file herein, Utah Junk Company will still have suffered a loss of more that $3.00 a ton on the shipments referred to in the complaint on file herein.

Affiant further says that Utah Junk Company has at all times been required, in the accumulation of stock pile of scrap metal, to accept miscellaneous scrap whenever and wherever it can get it within the area served by it. Scrap so accumulated is of miscellaneous types, size and quality and at no time has Utah Junk Company been able to accu-

[fol. 29] mulate stock piles sufficient to select the sizes suitable for smelting purposes without cutting and preparing the same. Affiant is informed and believes that in more populous areas it would be possible to accumulate a stock pile from which smelter requirements could be selected without torching and shearing, but such is not true in the area served by Utah Junk Company. While some scrap is delivered to Utah Junk Company's yard in sizes suitable for smelting purposes, affiant says that approximately 70% of all smelter fluxing scrap shipped by Utah Junk Company to United States Smelting, Refining & Mining Company has required preparation by shearing or torching. Affiant further says that as the demand for scrap increased prior to and during the war it became increasingly difficult to get scrap in substantial quantities.

Affiant further says that prices fixed by heavy melting steel regulations never were sufficient to meet the cost to Utah Junk Company of acquiring scrap and preparing the same to smelter specifications and affiant is informed by officers of the United States Smelting, Refining & Mining Company and believes that the cost to the Smelting Company of shearing and torching scrap is greater than that to Utah Junk Company for the same service.

Affiant states that at all times from April 25, 1942 until the filing of the protest by Utah Junk Company he believed in good faith that the Office of Price Administration would recognize that shipments covered by the complaint on file herein were not subject to heavy melting steel prices and regulations. He further believed in good faith that the order of April 5, 1944, establishing particular specifications for smelter fluxing scrap, was full recognition by the Office of Price Administration that heavy melting steel regulations never did apply to smelter fluxing scrap. Affiant made such contention to the Salt Lake Office of the Office of Price Administration and when such office disagreed with him he promptly filed his protest with the Office of Price Administration, which protest is the basis of plaintiff's complaint on file herein.

Affiant denies that the allowance of the relief sought herein would be inflationary and in support of his contention states that in 1943 an allowance of $1.50 a ton preparation charge was granted and again confirmed by the order of April 5, 1944. Affiant assumes that those allow-

ances are not inflationary and if not then the allowance of the relief herein sought could not be inflationary.

(Signed) L. D. Fariman.

Subscribed and sworn to before me this 21st day of December, 1944. (Signed) Edria T. Hansen, Notary Public, Residing at Salt Lake City, Utah. (Seal.)

[fol. 100] [Stamp:] United States Emergency Court of Appeals. Filed Jan. 16, 1945. Herman C. Beasley, Clerk.

IN THE UNITED STATES EMERGENCY COURT OF APPEALS

No. 184

UTAH JUNK CO., a Corporation, Complainant,

v.

CHESTER BOWLES, Price Administrator, Respondent

RESPONDENT'S REPLY TO COMPLAINANT'S APPLICATION FOR LEAVE TO INTRODUCE EVIDENCE

Now comes Chester Bowles, Price Administrator, Respondent, by his duly authorized attorney, and in answer to the Application For Leave to Introduce Evidence, filed by Utah Junk Co., a corporation, Complainant in this case, states that he does not object to the entry of an order by this Court pursuant to Section 204(a) of the Act that Complainant be granted leave to introduce the additional evidence referred to in its application. Respondent requests that such additional evidence be presented to the Price Administrator together with such other evidence as the Price Administrator may deem it necessary or proper to receive.

Respectfully submitted, Nathaniel L. Nathanson, Associate General Counsel.

Dated: January 15, 1945.

[fol. 101] [Stamp:] United States Emergency Court of Appeals. Filed Jan. 16, 1945. Herman C. Beasley, Clerk

UNITED STATES EMERGENCY COURT OF APPEALS

No. 184

UTAH JUNK Co., a Corporation

v.

CHESTER BOWLES, Price Administrator

ORDER

Upon consideration of Complainant's application for leave to introduce additional evidence and of Respondent's reply thereto,

It is Ordered that Complainant be, and it hereby is, granted leave to introduce the additional evidence referred to in its application.

It is Further Ordered that the said additional evidence be presented to the Price Administrator, together with such additional evidence as the Price Administrator may deem it necessary or proper to receive.

By the Chief Judge. Teste: Herman C. Beasley, Clerk.

January 16, 1945

[fol. 102] [Stamp:] United States Emergency Court of Appeals. Filed Mar. 29, 1945. Herman C. Beasley, Clerk

IN THE UNITED STATES EMERGENCY COURT OF APPEALS

No. 184

UTAH JUNK COMPANY, a Corporation

v.

CHESTER BOWLES, Price Administrator

MOTION FOR ENLARGEMENT OF TIME TO FILE SUPPLEMENTAL TRANSCRIPT OF PROCEEDINGS BEFORE THE ADMINISTRATOR

Now comes Chester Bowles, Price Administrator, Respondent, by his duly authorized attorney Nathaniel L. Nathanson, Associate General Counsel, Office of Price Ad-

ministration, and moves this Court to enlarge until April 7, 1945 the time within which Respondent may file the Supplemental Transcript of Proceedings before the Administrator in the above entitled cause.

Respondent states that the additional evidence offered by Complainant was received by the Administrator on February 28, 1945. Pursuant to Rule 15(b) of the Rules of the Court, the supplemental transcript containing such evidence is required to be filed not later than March 30, 1945.

A stipulation of the parties agreeing to such enlargement of time is attached hereto.

Respectfully submitted, Nathaniel L. Nathanson, Associate General Counsel, Office of Price Administration.

Dated: March 29, 1945.

[fol. 103] [Stamp:] United States Emergency Court of Appeals. Filed Mar. 29, 1945. Herman C. Beasley, Clerk

IN THE UNITED STATES EMERGENCY COURT OF APPEALS

No. 184

UTAH JUNK COMPANY, a Corporation

v.

CHESTER BOWLES, Price Administrator

STIPULATION

It is hereby stipulated and agreed between Utah Junk Company, a corporation, Complainant, by its duly authorized attorney, Keith L. Seegmiller, and Chester Bowles, Price Administrator, Respondent, by his duly authorized attorney Nathaniel L. Nathanson, Associate General Counsel, Office of Price Administration, that the time in which Respondent may file the Supplemental Transcript of Proceedings before the Administrator in the above entitled cause may be extended to April 7, 1945.

(S.) Keith L. Seegmiller, Attorney for Complainant:

(S.) Nathaniel L. Nathanson, Associate General Counsel, Office of Price Administration.

Dated: March 27, 1945.

[fol. 104] [Stamp:] United States Emergency Court of Appeals. Filed Mar. 29, 1945. Herman C. Beasley, Clerk

UNITED STATES EMERGENCY COURT OF APPEALS

No. 184

UTAH JUNK CO., a Corporation

v.

CHESTER BOWLES, Price Administrator

ORDER

Upon consideration of Respondent's motion for enlargement of time to and including April 7, 1945, within which to file the Supplemental Transcript of Proceedings before the Price Administrator in the above entitled case, and of Stipulation filed herein by the parties agreeing to the enlargement,

It is Ordered that Respondent's motion be, and it hereby is, granted.

By the Chief Judge. Teste: Herman C. Beasley, Clerk.

March 29, 1945.

[fol. 105] [Stamp:] United States Emergency Court of Appeals. Filed Apr. 7, 1945. Herman C. Beasley, Clerk

IN THE U. S. EMERGENCY COURT OF APPEALS

No. 184

UTAH JUNK CO.

v.

CHESTER BOWLES, Price Administrator

MOTION TO ENLARGE TIME FOR THE FILING OF THE SUPPLEMENTAL TRANSCRIPT

Now comes Chester Bowles, Price Administrator, Respondent, by his duly authorized attorney, and moves this Court to enlarge until April 9, 1945 the time for the filing

of the Supplemental Transcript of Proceedings before the Price Administrator in the above entitled cause on the ground that, due to unexpected technical difficulties the Government Printing Office has not completed the printing of said Supplemental Transcript.

Respectfully submitted, Nathaniel L. Nathanson, Associate General Counsel.

[fol. 106] [Stamp:] United States Emergency Court of Appeals. Filed Apr. 10, 1945. Herman C. Beasley, Clerk

UNITED STATES EMERGENCY COURT OF APPEALS

No. 184

UTAH JUNK COMPANY

v.

CHESTER BOWLES, Price Administrator

ORDER

Upon consideration of Respondent's motion for enlargement of time until April 9, 1945, for the filing of the Supplemental Transcript of Proceedings before the Price Administrator in the above entitled case,

It is Ordered that Respondent's motion be, and it hereby is, granted.

By the Chief Judge. Teste: Herman C. Beasley, Clerk.

April 10, 1945.

[fol. 107] [Stamp:] United States Emergency Court of Appeals. Filed Apr. 24, 1945. Herman C. Beasley, Clerk.

IN THE UNITED STATES EMERGENCY COURT OF APPEALS

No. 184

UTAH JUNK COMPANY

v.

CHESTER BOWLES, Price Administrator

MOTION

Comes now the complainant in the above named case, by its attorney of record, and moves the Court to enlarge until May 10, 1945 the time for filing its brief, upon the ground that necessary correspondence between the complainant in Salt Lake City and its Attorney in Washington, D. C. has consumed practically all of the time provided for by rule of court.

Respectfully submitted, Keith L. Seegmiller, Attorney for Complainant.

[fol. 108] [Stamp:] United States Emergency Court of Appeals. Filed Apr. 24, 1945. Herman C. Beasley, Clerk.

UNITED STATES EMERGENCY COURT OF APPEALS

No. 184

UTAH JUNK COMPANY

v.

CHESTER BOWLES, Price Administrator

ORDER

Upon consideration of Complainant's motion for enlargement of time until May 10, 1945, within which to file its brief herein, and counsel for Respondent having stated orally that he has no objection thereto,

It is Ordered that Complainant's motion be, and it hereby is, granted.

By the Chief Judge. Teste: Herman C. Beasley, Clerk.

April 24, 1945.

[fol. 109] [Stamp.] United States Emergency Court of Appeals, Filed June 20, 1945, Herman C. Beasley, Clerk

UNITED STATES EMERGENCY COURT OF APPEALS

No. 184.

UTAH JUNK CO.

v.

CHESTER BOWLES, Price Administrator.

MOTION FOR LEAVE TO CORRECT TRANSCRIPT

Now comes Chester Bowles, Price Administrator, by his duly authorized attorney, and, pursuant to Rule 15(d) of the Rules of this Court, respectfully moves that the transcript of the proceedings in connection with the protest heretofore filed be corrected by the addition thereto of copies of (1) the application filed by Complainant with the District Office of the Office of Price Administration in Salt Lake City, Utah, dated January 28, 1944, to charge special preparation fee under Section 1304.13(a)(5) of Revised Price Schedule No. 4 and (2) the letter of authorization from the District Office dated February 19, 1944. Respondent submits the following reasons in support of this suggestion.

Complainant's protest was in terms directed against the Price Schedule itself (Tr. 1). During the course of the proceeding, however, the Administrator also considered the protest as if it had been in effect directed against the sufficiency of the action taken by the Office of Price Administration in granting the application. The letter from the Na- [fol. 110] tional Office of the Office of Price Administration confirming the action of the District Office in granting the application was included in the protest. The application itself and the letter of authorization from the District Office

were, however, inadvertently omitted from the transcript. Respondent suggests that the Court should be able to refer to the application and original authorization in the event that, in the Court's judgment, the precise form of these documents should become pertinent.

A copy of the application and a copy of the authorization are attached to this motion.

Respectfully submitted, Richard H. Field, General Counsel.

[fol. 1??]

Date: Jan. 28, 1944.

Mr. Mark H. Greene, District Price Executive, Office of Price Administration, 503 Atlas Building, Salt Lake City 1, Utah.

Attention: Carl D. Roady, Associate Price Specialist

Application for permission to charge special preparation fee under Section 1304.13(a)(5)

The applicant, The Utah Junk Company, address, hereby represents that it has been the customary business practice for firms in this area to furnish iron and steel scrap to:

The American Smelting & Refining Company, Salt Lake City, Utah,

The International Smelting & Refining Co., Salt Lake City, Utah,

The United States Smelting, Refining & Mining Co., Salt Lake City, Utah,

for use as a flux in smelter operations to the following specifications.

"Wrought iron and steel scrap, black or galvanized, 1/8 inch and over in thickness, not over 12 inches in width and not over 2 feet in length. Individual pieces shall not weigh over 50 pounds, must be free from attachments and so cut as to lie flat in the charging box: May include pipe cut to lengths of 2 feet or less: and may include heavy oil field or similar cable not less than 1 inch in diameter and cut to lengths of 2 feet or less. May not include auto body and fender stock, tin plate, terne plate, or other metal coated material."

Pursuant to Section 1304.13(a)(5) we hereby request permission from your office to charge, in addition to the price for No. 2 heavy melting steel, $1.50 per gross ton for preparation to the above specifications:

(Signed) The Utah Junk Company, by L. D. Foreman.

[fol. 112] Date: February 19, 1944.

The Utah Junk Company, 850 So. 4th W., Salt Lake City, Utah.

Notification of Permission to Charge Special Preparation Fee Under Section 1304.13(a)(5) of RPS No. 4

GENTLEMEN:

This is in reference to your application dated 1 28 44 in which you request permission pursuant to the provisions of Section 1304.13(a)(5) of Revised Price Schedule No. 4 to charge in addition to the price for No. 2 heavy melting steel, $1.50 per gross ton for preparation of iron and steel smelter scrap to the following specifications:

"Wrought iron and steel scrap, black or galvanized, 1/8 inch and over in thickness, not over 12 inches in width and not over 2 feet in length. Individual pieces shall not weigh over 50 pounds, must be free from attachments and so cut as to lie flat in the charging box: May include pipe cut to lengths of 2 feet or less; and may include heavy oil field or similar cable not less than 1 inch in diameter and cut to lengths of 2 feet or less. May not include auto body and fender stock, tin plate, terne plate, or other metal coated material."

In such application you have represented that it has been the customary business practice for firms in your area to supply iron and steel smelter scrap of such specifications to smelters located in Utah for use as a flux in smelter operations.

You are hereby notified that your application has been granted. Accordingly you may charge, in addition to the price for No. 2 heavy melting steel, $1.50 per gross ton for preparation of iron and steel smelting scrap to the above specifications for sale to smelters.

Yours very truly, Mark H. Greene, District Price Executive, by Carl D. Roady, Associate Price Specialist.

[fol. 113] [Stamp:] United States Emergency Court of Appeals. Filed Jul. 9, 1945. Herman C. Beasley, Clerk

UNITED STATES EMERGENCY COURT OF APPEALS

No. 184

UTAH JUNK COMPANY, a Corporation,

v.

CHESTER BOWLES, Price Administrator

ORDER

Upon consideration of Respondent's motion filed June 20, 1945, for leave to correct the transcript of proceedings in the above entitled case, and counsel for Complainant having stated that he has no objection thereto,

It is Ordered that Respondent's motion be, and it hereby is, granted.

By the Chief Judge.

Teste: Herman C. Beasley, Clerk.

July 9, 1945.

[fol. 114] [Stamp:] United States Emergency Court of Appeals. Filed Jul. 14, 1945. Herman C. Beasley, Clerk

UNITED STATES EMERGENCY COURT OF APPEALS

No. 184

UTAH JUNK COMPANY

v.

CHESTER BOWLES, Price Administrator

ORDER

It is ordered that the Complaint in the above entitled case be assigned for hearing and determination to a division of

the Court consisting of Judge Magruder, Judge McAllister and Judge Laws.

By the Chief Judge.

Teste: Herman C. Beasley, Clerk; by J. Fredrick Mattingley, Chief Deputy Clerk.

July 14, 1945.

[fol. 115]

Saturday, July 14, 1945.

Pursuant to adjournment and call of the Chief Judge, the Court met at 10:00 A. M., at Washington, D. C.

Before Honorable Calvert Magruder, Honorable Thomas F. McAllister, and Honorable Bolitha J. Laws, Associate Judges.

No. 184

UTAH JUNK COMPANY, a Corporation,

v.

CHESTER BOWLES, Price Administrator

Argument commenced by Mr. Keith L. Seegmiller for the Complainant, continued by Mr. Jacob D. Hyman for the Respondent, and concluded by Mr. Keith L. Seegmiller for the Complainant.

[fol. 114] IN UNITED STATES EMERGENCY COURT OF APPEALS

No. 184

UTAH JUNK COMPANY

v.

CHESTER BOWLES, Price Administrator

Heard at Washington July 14, 1945

Before Magruder, McAllister and Laws, Judges

Mr. Keith L. Seegmiller, with whom Mr. Ernest L. Wilkinson was on the brief, for complainant.

Mr. Jacob D. Hyman, Assistant General Counsel, with whom Messrs. Richard H. Field, General Counsel, Nathaniel L. Nathanson, Associate General Counsel, Carl H. Fulda and John J. Downey, Jr., Attorneys, all of the Office of Price Administration, were on the brief, for respondent.

OPINION OF THE COURT—Filed August 6, 1945

Per Curiam:

Complainant, a junk dealer, operates in and around Salt Lake City, Utah. Its operations involve the processing of heavy scrap metal into pieces of small size, known as fluxing scrap, suitable for lead smelting. In this case it challenges the validity of Revised Price Schedule No. 4 by which ceiling prices were established for iron and steel scrap, on the ground that the Schedule failed to permit an allowance for the extra cost of processing fluxing scrap.

Maximum prices for iron and steel scrap were first established by Price Schedule No. 4, issued on April 2, 1941, under executive authority. (6 F. R. 1767). After the enactment of the Emergency Price Control Act of 1942, that Schedule was reissued, pursuant to the Act, as Revised Price Schedule No. 4, Iron and Steel Scrap, and republished on February 21, 1942. (7 F. R. 1207). As originally issued the Revised Schedule permitted no allowance for the processing of heavy scrap into fluxing scrap. However, on December 21, 1943, an allowance of $1.50 per gross ton for such processing was made available upon application to a Regional Office of the Office of Price Administration. Com-

[fol. 112] plaintant made application for the allowance in January, 1944; the application was granted as to future sales by the Salt Lake City office in February, 1944; and the granting of the application was confirmed by the national office on April 5, 1944. On June 30, 1944, the Schedule was revised and reissued as Maximum Price Regulation No. 4, so as to permit the allowance for processing, as to future sales, without the need for special application.

From April 25, 1942, to February 10, 1943, a period during which no allowance for processing was permitted, complainant sold a substantial amount of fluxing scrap to United States Smelting Refining and Mining Company. Complainant collected only the ceiling price permitted, but billed the Company at a rate which included a charge for preparation of the fluxing scrap, apparently with the expectation that if the regulation were subsequently held invalid, the Company would pay the additional charges. On August 7, 1944, complainant filed its protest against the Schedule. Upon the denial of that protest, the present complaint was filed.

Complainant makes no objection to the amount of allowance authorized by the regulation, nor does it object to the regulation on the ground that it failed to grant the $1.50 allowance retroactively. But complainant asserts that, if the invalidity of the Schedule is established, the Smelting Company is willing to pay, for the sales between April 25, 1942, and February 10, 1943, a sum equivalent to $1.50 per gross ton processing charge. In this proceeding, therefore, complainant seeks to establish that Revised Price Schedule No. 4 was invalid during that time.

In the case of *Thomas Paper Stock Company, et al.* v. *Bowles*, 148 F. 2d 831 (1945), cert. granted June 4, 1945, 13 L. W. 3465, this Court, by a majority decision, committed itself to the proposition that an "objection was not available to or properly included by the complainants in their protest to the Administrator because it involved a ground of invalidity which did not exist when the protest was filed, having admittedly been corrected by the Administrator" prior to the filing of the protest. In this case complainant concedes that at the time its protest was filed the form of the regulation was unobjectionable to it. However, it attempts to distinguish its situation from that in the *Thomas Paper Stock* case. It argues that its interest in a premium for processing was made known to the Administrator as early as May, 1942, and was continually pressed thereafter

by way of informal negotiations, so that there was actually a protest before the Administrator prior to the granting of the processing allowance. Complainant points also to what it asserts to have been a formal protest filed by the Smelting Company in November, 1943, by which that Company sought leave to pay the additional charge. Complainant argues that it should have the benefit of that protest. There is no merit to either of these contentions. Revised Procedural Regulation No. 1, issued under the authority of Section 203(a) of the Act, establishes a formal procedure for the filing of protests. The Administrator cannot be expected to carry out the difficult task assigned to him if protests are permitted to be filed on an informal basis. As to the alleged protest filed by the Smelting Company the Administrator denies the Smelting Company filed a protest, [fol. 113] asserting that it was a petition for amendment. In any event persons may not be treated as parties to a protest unless the language of the protest clearly indicates such intention. *Cf. Bierman Realty Co. v. Bowles*, 140 F. 2d 974 (E. C. A. 1944), cert. den. 322 U. S. 742. We think complainant has failed to distinguish its situation from that of complainants in the *Thomas Paper Stock* case.

Until and unless our opinion in that case is overruled, it stands as the controlling law. The complaint in this case accordingly will be dismissed.

[fol. 119] [Stamp:] United States Emergency Court of Appeals. Filed Aug. 6, 1945. Herman C. Beasley, Clerk

UNITED STATES EMERGENCY COURT OF APPEALS

No. 184

UTAH JUNK COMPANY, a Corporation,

v.

CHESTER BOWLES, Price Administrator

Present: Magruder, McAllister, and Laws, JJ.

JUDGMENT

This case came on to be heard on the complaint and answer, and on the transcript of proceedings before the Price Administrator, Office of Price Administration, and was argued by counsel.

Upon consideration whereof, it is now here ordered and adjudged that the complaint herein be, and it hereby is, dismissed.

It is further ordered that the clerk of this Court transmit forthwith a certified copy of this judgment to Chester Bowles, Price Administrator.

Dated August 6, 1945.

By the division.

Teste: Herman C. Beasley, Clerk.

[fol. 120] UNITED STATES EMERGENCY COURT OF APPEALS

I, Herman C. Beasley, Clerk of the United States Emergency Court of Appeals, hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 119, both inclusive, constitute a true copy of

(1) Transcript of Proceedings before the Price Administrator

(2) Supplemental Transcript of Proceedings before the Price Administrator

(3) Complaint

(4) Answer of Respondent

(5) Proceedings in the United States Emergency Court of Appeals

in the case of No. 184, Utah Junk Company, a corporation, v. Chester Bowles, Price Administrator, as the same remain upon the files and records of said United States Emergency Court of Appeals.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of said United States Emergency Court of Appeals, at the City of Washington, this 29th day of August, A. D. 1945.

Herman C. Beasley, Clerk, United States Emergency Court of Appeals; by J. Fredrick Mattingley, Chief Deputy Clerk. (Seal.)

[fol. 116] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 5, 1945

The petition herein for a writ of certiorari to the United States Emergency Court of Appeals is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below, which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson took no part in the consideration or decision of this application.

FILE COPY

SUPREME COURT U.S.
OCT 1945
CHARLES ELMORE CROPLEY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 400

UTAH JUNK COMPANY,

Petitioner,

vs.

CHESTER BOWLES, PRICE ADMINISTRATOR

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS.

KEITH L. SEEGMILLER,
Counsel for Petitioner.

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The jurisdiction of this Court is invoked under Sec. 204(d) of the Emergency Price Control Act of 1942, c. 26, 56 Stat. 23, 50 U. S. C. App., Sec. 924(d).

Questions Presented

1. Is denial to petitioner of an unqualified right to test the validity of a price fixing regulation, the terms of which purport to prevent petitioner, at the peril of heavy penalties, from receiving payment of money otherwise lawfully payable to it, deprivation of property without due process of law?

2. Did the Emergency Court of Appeals err in holding that the right to test the validity of a price regulation under the provisions of Secs. 203 and 204(a) of the Emergency Price Control Act is conditioned upon the filing of protest before the Administrator amends the regulation to remove the claimed ground of invalidity?

3. Did the Emergency Court of Appeals err in holding in effect that the Emergency Price Control Act permits the imposition of penalties for violation of a price regulation without an opportunity to test the validity of the regulation?

Statement

The petitioner, desiring to test the validity of a regulation construed by the Office of Price Administration as preventing receipt by petitioner of some $4,500.00 in payment for fluxing scrap sold by it between April 25, 1942 and February 10, 1943, sought to invoke the exclusive jurisdiction of the Emergency Court of Appeals by means of the protest procedure provided by Secs. 203 and 204(a) of the Emergency Price Control Act. (50 U. S. C. App. 923, 924(a)). The Emergency Court of Appeals dismissed petitioner's complaint (R. 114), upon the ground that in such

proceedings invalidity of a regulation upon a ground removed by amendment before the protest was filed may not be asserted (R. 112-113). Basing the dismissal solely upon its prior decision in *Thomas Paper Stock Company, et al.* v. *Bowles*, 148 F. (2d) 831, certiorari granted June 4, 1945, No. 67, October term, 1945, the Emergency Court held: "Until and unless our opinion in that case is overruled, it stands as the controlling law. The complaint in this case accordingly will be dismissed" (R. 113).

As made clear in the opinion in the *Paper Stock Company* case, the only other avenue open to a party situated as is the petitioner, is the discretionary and qualified right to test the validity of a regulation incident to proceedings invoking the penal provisions of the statute (Sec. 204(e) of the Act, 50 U. S. C. App. 924(e)).

The petitioner is a junk dealer operating in and around Salt Lake City, Utah and for a long time prior to April 25, 1942 had supplied fluxing scrap metal to the U. S. Smelting Refining and Mining Company, hereinafter called the customer (R. 4, 23, 94). On February 21, 1942 the Office of Price Administration issued Revised Price Schedule No. 4 (7 F. R. 1207), providing in section 1304.13 thereof maximum prices for stated grades of scrap metal including expressly heavy melting steel but not expressly including fluxing scrap or any other grade of substantially the same specifications as fluxing scrap. Petitioner did not regard the regulation as applicable to the fluxing scrap sold by it. However, on or about April 25, 1942 the Office of Price Administration notified the petitioner and its customer that the maximum prices for heavy melting steel provided in Revised Price Schedule No. 4 applied to petitioner's sales of fluxing scrap (R. 4-5, 95). This maximum price was substantially below both the established market price for fluxing scrap and the price established by prior agreement between the parties (R. 5, 9, 97), under which they are

bound insofar as the agreement was not invalidated by the regulation.

Application to fluxing scrap of the price fixed for heavy melting steel is believed to have been invalid on the following grounds:

Heavy melting steel, used as flux in ordinary steel plants, may be in pieces as large as 18" x 60", while fluxing scrap, for use in lead blast furnaces, must be cut to sizes not larger than 12" x 24" (R. 3-4, 95). When Revised Price Schedule No. 4 was issued, there was a well recognized distinction in the industry between melting steel and fluxing scrap and an established price differential reflecting the cost of processing melting steel to fluxing scrap specifications (R. 9, 19, 26-27, 34-35). Thus the regulation as construed by the Office of Price Administration purported to eliminate arbitrarily and unreasonably, we believe, an established trade practice including an established processing allowance.

The sixty day period then allowed by statute for protesting the regulation (c. 26, title II, sec. 203, 56 Stat. 31), issued on February 21, 1942 (7 F. R. 1207) had expired when petitioner was notified on or about April 25, 1942 that the prices of melting steel were regarded as applicable to fluxing scrap. Nevertheless, petitioner immediately sought, through informal negotiations with the Office of Price Administration, to have the announced construction of the regulation set aside or modified (R. 5, 35), and concurrently with such negotiations petitioner continued until February 10, 1943 to sell fluxing scrap to its customer, but collected only the amount of the maximum price fixed by the regulation for heavy melting steel (R. 5, 35). It sold during that period 3,048.33 tons (R. 9).

On June 30, 1944 the statute requiring a protest challenging the validity of a regulation to be filed within sixty days

from the issuance of the regulation was amended to permit the filing of a protest at any time (Sec. 203(a) of the Emergency Price Control Act as amended June 30, 1944, 50 U. S. C. App, 923(a)). Under the authority of this amendment, petitioner filed its protest in the Office of Price Administration on August 7, 1944 (R. 1). Contemporaneously with this amendment of the statute, however, Revised Price Schedule No. 4 was amended on June 30, 1944 to allow a processing charge upon sales of fluxing scrap, in the amount of $1.50 per ton (9 F. R. 7330).

In its protest filed on August 7, 1944, the allowance of $1.50 per ton for processing was not challenged as arbitrary or unreasonable and petitioner concedes that from the date such allowance was permitted, the regulation was validly applied to fluxing scrap. Petitioner sought a ruling upon its protest in the Price Administration that prior to the amendment the regulation was not validly applicable to fluxing scrap and that accordingly petitioner's right to collect an additional $1.50 per ton for scrap sold between April 25, 1942 and February 10, 1943 should be recognized (R. 9, 10). Apparently assuming, without expressly so holding, that the regulation was valid to prevent collection of the additional amount, the Administrator denied the protest upon the grounds that to permit such collections generally would induce inflation, which it was his duty to prevent, and that neither insolvency nor any undue hardship was shown warranting an exception in the present case (R. 16-17, 68-71). Complaint, thereupon filed in the Emergency Court of Appeals seeking review of the Administrator's ruling, was denied on the ground that validity of a price-fixing regulation may not be challenged by means of the protest procedure upon grounds removed by amendment to the regulation prior to filing of the protest (R. 111-113).

Specification of Errors

The Emergency Court of Appeals erred:

1. In refusing to determine whether the regulation protested was valid during the period from April 25, 1942 to February 10, 1943.

2. In holding that the Price Administrator is not required to determine the validity of a regulation upon a protest filed after the claimed ground of invalidity has been removed by amendment.

3. In holding that the Emergency Price Control Act prohibits the filing of a protest against a regulation after the claimed ground of invalidity has been removed.

4. In holding that the Emergency Court of Appeals is not required by the Emergency Price Control Act to review denial of a protest under the circumstances in Specification 3 above.

5. In holding that denial of right to test the validity of a price regulation under Secs. 203 and 204(a) of the Emergency Price Control Act after the claimed grounds of invalidity have been removed is consistent with due process of law.

6. In dismissing petitioner's complaint.

Reasons for Granting the Writ

The decision of the Emergency Court of Appeals in this case is upon an important question of Federal law which has not been, but should be, settled by this Court. It is a question of public importance because the constitutional rights of many people will be governed by the final determination of it.

The Emergency Court of Appeals dismissed this case solely upon the ground that it is governed by the holding

in *Thomas Paper Stock Company, et al.* v. *Bowles*, 148 F. (2d) 831, now pending before this Court upon a writ of certiorari, No. 67, October term, 1945. In view of the identical holdings in these cases they should be considered together and ultimately decided in accordance with this Court's determination of the governing principles.

As construed by the Court below, the statute may operate to deprive petitioner of property without due process of law. If, as we seek to establish, the maximum price for heavy melting steel was not validly applied to sales of fluxing scrap during the critical period in this case, petitioner is entitled to collect from its customer some $4,500.00. Under the holding of the Court below, however, it may do so only at the peril of criminal prosecution and penalty and heavy civil damages in the nature of penalty without any guarantee that it will have an opportunity to test the validity of the regulation for violation of which the penalties might be imposed.

In *Yakus* v. *United States*, 321 U. S. 414, this Court held that the procedure provided by the Emergency Price Control Act for testing the validity of a price regulation is susceptible to administration consistent with due process of law. As there held to be required, petitioner has invoked that procedure but has encountered a construction of the statute rendering it inadequate to provide the constitutional guarantee of due process. We submit, therefore, that the holding of the Court below in the present case is opposed to the principles declared and the construction of the statute adopted in the *Yakus* case.

The statute does not require the construction of the Court below and we believe the slight factual differences between this case and the *Paper Stock Company* case serve further to show that no such construction was intended by Congress. In the present case, petitioner has not violated

the regulation. Hence, no enforcement proceedings are pending in which the alternative procedure provided by Sec. 204(e) of the Act may be invoked. However, the Office of Price Administration having consistently denied that petitioner is entitled to the additional payment desired to be collected, enforcement proceedings against petitioner may reasonably be expected to follow its acceptance of the additional payment. It would seem to follow, therefore, that the petitioner is still "subject" to the regulation in its form before the validating amendment and the Act provides that "Any person subject to any provision of such regulation, order or price schedule may file a protest at any time after its issuance." (Section 203(a) of the Act, 50 U. S. C. App. 923(a)).

The view seems unreasonable that having provided this unqualified and direct means of testing the validity of a regulation, Congress would have required resort by one so situated as is petitioner to violation of the regulation, enforcement proceedings and return to the Emergency Court through another door at the discretion of the Court having jurisdiction over the enforcement proceedings. Particularly there is no sound ground for the view, we believe, that Congress would have made the availability of the one procedure or the other dependent upon the fortuitous circumstance of amendment of the regulation prior to the filing of protest. The present case demonstrates that amendment of a regulation adjusting a maximum price prospectively does not render a regulation obsolete for administrative purposes. It is retained by the Administratoy in support of the enforcement provisions of the statute to prevent future acceptance of a price in excess of the price fixed prior to the amendment. The Administrator has carefully explained in this case why such continued effect must be given to a

superseded regulation to carry out his important function of preventing inflation (R. 16-17, 68-69).

Conclusion

For the reasons stated, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

KEITH L. SEEGMILLER,
Counsel for Petitioner.

No. 400

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1945.

UTAH JUNK COMPANY,
Petitioner,

vs.

CHESTER BOWLES, PRICE ADMINISTRATOR.

ON WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS

BRIEF FOR PETITIONER

KEITH L. SEEGMILLER,
Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES

October Term, 1945

No. 400

UTAH JUNK COMPANY,
Petitioner,

vs.

CHESTER BOWLES, Price Administrator.

ON WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS

BRIEF FOR PETITIONER

OPINIONS BELOW

The Price Administrator rendered two opinions, one upon initial consideration of the protest (R. 10-15) and another upon reconsideration (R. 55-63). The opinion of the Emergency Court of Appeals (R. 97-99) is reported in 150 F. (2d) 963.

JURISDICTION

The judgment of the Emergency Court of Appeals was entered on August 6, 1945 (R. 100). The petition for a writ of certiorari was filed on September 5, 1945 and granted on November 5, 1945. The jurisdiction of this Court is invoked under Sec. 204(d) of the Emergency Price Control Act of 1942, c. 26, 56 Stat. 31, 50 U. S. C. App. Sec. 924 (d), as amended.

QUESTIONS PRESENTED

1. Is denial to petitioner of an unqualified right to test the validity of a price fixing regulation, the terms of which purport to prevent petitioner at the peril of heavy penalties from receiving payment of money otherwise lawfully payable to it, deprivation of property without due process of law?

2. Did the Emergency Court of Appeals err in holding that the right to test the validity of a price fixing regulation under the provisions of Sections 203 and 204(a) of the Emergency Price Control Act is conditioned upon the filing of protest before the Administrator amends the regulation to remove the claimed ground of invalidity?

3. Did the Emergency Court of Appeals err in holding in effect that the Emergency Price Control Act permits the imposition of penalties for violation of a price fixing regulation without an opportunity to test the validity of the regulation?

STATUTES INVOLVED

The Statutes involved are those provisions of the Emergency Price Control Act governing the procedure for obtaining relief from the effects of an invalid price fixing regulation. They are contained in Sections 203 and 204 of the Act, 50 U. S. C. App. 923 and 924), in pertinent parts as follows:

Section 923.

"(a) At any time after the issuance of any regulation or order under section 2, or in the case of a price schedule, at any time after the effective date thereof specified in section 206, any person subject to any provision of such regulation, order, or price schedule may, in accordance with regulations to be prescribed by the Administrator, file a protest specifically setting forth objections to any such provision * * *. Within a reasonable time after the filing of any protest under this subsection, but in no event more than thirty days after

such filing, the Administrator shall either grant or deny such protest in whole or in part, notice such protest for hearing, or provide an opportunity to present further evidence in connection therewith. In the event that the Administrator denies any such protest in whole or in part, he shall inform the protestant of the grounds upon which such decision is based, and of any economic data and other facts of which the Administrator has taken official notice."

Section 924

"(a) Any person who is aggrieved by the denial or partial denial of his protest may, within thirty days after such denial, file a complaint with the Emergency Court of Appeals, created pursuant to subsection (e), specifying his objections and praying that the regulation, order, or price schedule protested be enjoined or set aside in whole or in part. * * * Upon the filing of such complaint the court shall have exclusive jurisdiction to set aside such regulation, order, or price schedule, in whole or in part, to dismiss the complaint, or to remand the proceeding: *Provided*, That the regulation, order, or price schedule may be modified or rescinded by the Administrator at any time notwithstanding the pendency of such complaint. * * No objection to such regulation, order, or price schedule, and no evidence in support of any objection thereto, shall be considered by the court, unless such objection shall have been set forth by the complainant in the protest or such evidence shall be contained in the transcript. * * *

"(b) No such regulation, order, or price schedule shall be enjoined or set aside, in whole or in part, unless the complainant establishes to the satisfaction of the court that the regulation, order, or price schedule is not in accordance with law, or is arbitrary or capricious. * * *

"(e) There is hereby created a court of the United States to be known as the Emergency Court of Appeals * * *".

(d) ***The Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any regulation or order issued under section 2 of any price schedule effective in accordance with the provisions of section 206, and of any provision of any such regulation, order, or price schedule. Except as provided in this section, no court, Federal, State, or Territorial, shall have jurisdiction or power to consider the validity of any such regulation, order, or price schedule, or to stay, restrain, enjoin, or set aside, in whole or in part, any provision of this Act authorizing the issuance of such regulations or orders, or making effective any such price schedule, or any provision of any such regulation, order, or price schedule or to restrain or enjoin the enforcement of any such provision.

(e)(1) Within thirty days after arraignment, or such additional time as the court may allow for good cause shown, in any criminal proceeding, and within five days after judgment in any civil or criminal proceeding, brought pursuant to section 205 involving alleged violation of any provision of any regulation or order issued under section 2 or of any price schedule effective in accordance with the provisions of section 206, the defendant may apply to the court in which the proceeding is pending for leave to file in the Emergency Court of Appeals a complaint against the Administrator setting forth objections to the validity of any provision which the defendant is alleged to have violated. The court in which the proceeding is pending shall grant such leave with respect to any objection which it finds is made in good faith and with respect to which it finds there is reasonable and substantial excuse for the defendant's failure to present such objection in a protest filed in accordance with section 205(a). Upon the filing of a complaint pursuant to and within thirty days from the granting of such leave, the Emergency Court of Appeals shall have jurisdiction to enjoin or set aside in whole or in part the provision of the regulation, order, or price schedule complained of or to dismiss the complaint. The court

may authorize the introduction of evidence, either to the Administrator or directly to the court, in accordance with subsection (a) of this section. The provision of subsections (b), (c), and (d) of this section shall be applicable with respect to any proceeding instituted in accordance with this subsection.

(2) In any proceeding brought pursuant to section 205 involving an alleged violation of any provision of any such regulation, order or price schedule, the court shall stay the proceeding—

(i) during the period within which a complaint may be filed in the Emergency Court of Appeals pursuant to leave granted under paragraph (1) of this subsection with respect to such provision;

(ii) during the pendancy of any protest properly filed by the defendant under section 203 prior to the institution of the proceeding under section 205, setting forth objections to the validity of such provision which the court finds to have been made in good faith; and

(iii) during the pendancy of any judicial proceeding instituted by the defendant under this section with respect to such protest or instituted by the defendant under paragraph (1) of this subsection with respect to such provision, and until the expiration of the time allowed in this section for the taking of further proceedings with respect thereto.

"If any provision of a regulation, order, or price schedule is determined to be invalid by judgment of the Emergency Court of Appeals which has become effective in accordance with section 204(b), any proceeding pending in any court shall be dismissed, and any judgment in such proceeding vacated, to the extent that such proceeding or judgment is based upon violation of such provision. Except as provided in this subsection, the pendency of any protest under section 203, or judicial proceeding under this section, shall not be grounds for staying any proceeding brought pur-

suant to section 205; nor, except as provided in this subsection, shall any retroactive effect be given to any judgment setting aside a provision of a regulation or order issued under section 2 or of a price schedule effective in accordance with the provisions of section 206."

STATEMENT

Petitioner seeks a declaration of invalidity of a price regulation in its application by the Price Administrator to petitioner's sales of fluxing scrap. Unless the regulation is valid to prevent such action petitioner can collect an additional $1.50 per ton for 3048.33 tons of such scrap sold by it to the U. S. Smelting, Refining and Mining Company (hereinafter called the customer) between April 25, 1942, and February 10, 1943. Petitioner invoked the exclusive jurisdiction of the Emergency Court of Appeals by means of the protest procedure provided by Sections 203 and 204(a) of the Emergency Price Control Act (50 U.S.C. App. 923, 924(a)). Its protest filed in the Office of Price Administration on August 7, 1944 was against application of the regulation to sales of scrap for use in lead blast furnaces upon the ground that the regulation, expressly referring to heavy melting steel and making no reference at all to fluxing scrap, in fact did not and was not intended to apply to the latter (R. 2, 4). The Price Administrator apparently assumed valid application of the regulation and denied the protest upon the ground that petitioner sought retroactive relief contrary to the provisions of a valid regulation and not justified as a discretionary matter by any showing of undue hardship or other special circumstances (R. 13-15, 58-63). The Emergency Court of Appeals refused to consider the merits of the protest upon the ground that the procedure followed (that provided by Sections 203 and 204(a) of the Act) is not available to petitioner because the claimed ground of invalidity of the regulation was removed by amendment before the protest was filed (R. 97-99).

The particular provision of the regulation involved is contained in section 1304.13 of Revised Price Schedule No. 4 issued on February 24, 1942 (7 FR 1207). It makes no express provision for a maximum price for fluxing scrap or for any other grade of substantially the same specifications as fluxing scrap. It did provide a maximum price for heavy melting steel which, in practical effect in the industry, constitutes the stock from which fluxing scrap is processed (R. 2, 3, 22-23). The regulation prescribes that heavy melting steel may be in pieces as large as 18" x 60", a grade adapted to use as flux in ordinary steel plants. Fluxing scrap, for use in lead blast furnaces must be cut to sizes not larger than 12" x 24" (R. 26, 28, cf. R. 2, 3, 22-23). When Revised Price Schedule No. 4 was issued there was a well recognized distinction in the industry between melting steel and fluxing scrap and an established price differential reflecting the cost of processing melting steel to fluxing scrap specifications (R. 28, cf. R. 22-23).

Thus the regulation would seem to mean that it prescribed a maximum price for unprocessed scrap, leaving unaffected by that regulation the permissible added charge for the service of processing. Petitioner did not regard the regulation as applicable to its sales of fluxing scrap which it continued to sell to its customer at the price fixed by agreement between them until April 25, 1942 (R. 4),

*The regulation had in fact been regarded in the industry as not applicable to fluxing scrap over a much longer period. It was originally issued on April 3, 1941, by the Price Stabilization Division of the Advisory Commission to the Council of National Defense as Price Schedule No. 4 (6 FR 1767). After creation of the Office of Price Administration on January 30, 1942 (Oct. 2 Supp., 204 Stat. 2), the schedule was reissued without change so far as here pertinent, on February 24, 1942, as a regulation of the Administration. The Price Stabilization Division which had originally issued the regulation, seems not to have regarded it as applicable to fluxing scrap at least it does not appear that there was any effort by that Division to enforce any such application of it.

On and about that date the Office of Price Administration notified petitioner and its customer that the maximum prices for heavy melting steel were applicable also as the maximum prices for fluxing scrap and that petitioner's sales of fluxing scrap for a price in excess of the prices for melting steel were in violation of the statute (R. 4, 27).

Thereafter until February 10, 1943, petitioner continued to sell fluxing scrap to its customer, billing it for their agreed price but collecting only an amount equal to the maximum price fixed by the regulation for heavy melting steel. Under the law as then existing petitioner could not have filed a formal protest to challenge the validity of the regulation since the law permitted a regulation to be protested only within 60 days from the date of its issuance (Ch. 26, sec. 203, 56 Stat. 31), 60 days from February 21, 1942 in the present case, (R. 56; 7 FR. 1207). Nevertheless, petitioner immediately sought, through informal negotiations with the Office of Price Administration, to have the announced construction of the regulation set aside or modified (R. 5-7, 27-28).

On June 30, 1944, the statute was amended to permit the filing of a protest at any time, abolishing the 60 day limitation period theretofore existing (Ch. 325, sec. 106, 58 Stat. 638; 50 USC. App. 923). On the same day that the time limitation upon the filing of a protest was thus removed, the Office of Price Administration amended Revised Price Schedule No. 4 to allow a processing charge on sales of fluxing scrap in the amount of $1.50 per ton (9 FR. 7330). As thus revised, petitioner concedes the regulation is valid.

Petitioner's protest was filed on August 7, 1944, timely by reason of the amendatory legislation of June 30, 1944, but more than a month after the validating amendment to the regulation on the latter date. The Administrator considered the protest twice, once in an opinion dated October 26, 1944 (R. 10-15), and upon reconsideration in an opinion

dated April 4, 1945 (R. 55-63). On both occasions the merits of the protest were considered by him without question as to his power under the statute to grant any relief found by him to be justified. The Emergency Court of Appeals dismissed the complaint upon the authority of its earlier decision in *Thomas Paper Stock Co. v. Bowles*, 148 F. (2) 831, holding that the Administrator's power to grant retroactive relief "is purely incidental to the Administrator's power to deal with an existing regulation and that it cannot be invoked by a protest which merely requests retroactive relief based upon an objection to a regulation which has already been met by its modification or rescission."

SUMMARY OF ARGUMENT

The court below erred in holding that the right to protest a regulation of the Office of Price Administration under the provisions of section 203 of the Price Control Act ceases with amendment of the regulation removing the grounds for protest. This holding ignores the plain provisions of the statute that a protest may be filed at any time by anyone "subject to" the regulation since the regulation protested presently restrains petitioner from enforcement of a valuable contract right, the right to collect in the amount provided by contract for fluxing scrap metal sold and delivered by petitioner before the regulation was amended.

The holding of the court below ignores also the apparent purpose of Congress in amending the statute on June 30, 1944 to remove a sixty day time limitation upon the filing of protests. In the present case, as undoubtedly in many others, the need for filing a protest against a regulation could not have been realized until enforcement proceedings for violation of it, after the expiration of sixty days, were threatened. The injustice of this situation would be cured by granting, as was done, the right to file protest at any time. The additional bar urged in this case leaves the injustice uncured. There is no language in the statute

expressly providing the bar here raised and since the existence of it would defeat the Congressional purpose in removing the sixty day limitation, Congressional intention to provide it may not be inferred. Moreover, the results flowing from the construction urged on behalf of respondent are so discriminatory and unfair that they may not be regarded by implication as intended by Congress.

Prior to amendment of the legislation here involved the Administration had construed the statute as permitting consideration of a protest filed after the grounds for protest had been removed by amendment. In amending the legislation without change in this respect Congress is presumed to have approved the practice.

As construed by the court below the statute permits imposition of penalties for violation of a regulation without opportunity to test the validity of it, a result prevented by the due process clause of the Constitution. This construction is not required by the terms of the statute and under established principles of statutory construction will be avoided.

ARGUMENT

The Emergency Court of Appeals has misconstrued the statute. Its decision (a) denies effect to the statutory language; (b) denies effect to the apparent purposes of Congress, (c) rests upon a construction opposed to that adopted by the officials administering the Act, and (d) rests upon a construction which would render the statute unconstitutional.

(a) The statute provides that "at any time after the issuance of any regulation or order * * * any person subject to any provision of such regulation or order" may file a protest. The Congress provided no other condition or restriction and the additional bar set up in the opinion of the Court below cannot, we believe, be reconciled with this statutory provision. That petitioner is "subject to" the

regulation here challenged seems clear. It has a contract with its customer which though fully executed on the part of the petitioner remains executory in part as to the customer. The executory portion is binding and enforceable unless the challenged regulation prevents enforcement. As far as petitioner's rights under the contract are concerned, it is of no consequence that the regulation has been amended. The present restraint upon petitioner flows from the provisions of the regulation prior to the amendment and for the purposes of such restraint they continue effective.

We submit that petitioner is "subject to" the regulation also under the plain provisions of the Administrator's definition of the term. Section 24 of Revised Procedural Regulation No. 1 provides:

> "A person is, for the purposes of this revised procedural regulation, subject to a provision of a maximum price regulation only if such provision prohibits or requires action by him. * * *" (9 FR. 5791).

Petitioner's sole complaint here is that the regulation "prohibits action" by it. In this respect it is significant that when the time for filing a protest was limited to sixty days, enforcement proceedings likely lagged behind the expiration of that period. At least that was true in the present case in which the time for filing a protest had expired before the Administration made known its view that petitioner was violating the regulation. Under the law as it then was petitioner had a choice between stopping business entirely, operating at substantial loss, or risking violation of the regulation without any right whatever, under the holding of the court below, to test the validity of it.

In his opinions upon the protest in this case the Administrator proceeded upon the view, of course, that the regulation, although amended, presently restrains petitioner in accordance with the terms of it prior to the amendment.

If petitioner should now accept additional payment for the fluxing scrap sold by it prior to February 10, 1943 the penal provisions of the statute would undoubtedly be invoked by the Administration. We submit that the respondent cannot hold the regulation as a club over petitioner's head on the one side and on the other deny that petitioner is subject to it.

(b) The apparent purpose of Congress in the repeal of the sixty day limitation upon the filing of a protest was that of permitting test of a regulation under circumstances of the very nature of those here presented. The time limitation was removed, that is, to make the remedy available to those who did not become aware of the effect of a regulation upon them within sixty days from its issuance. In the present case the regulation was issued on February 21, 1942. It contained no express reference to fluxing scrap or other scrap of substantially the same specifications. In substantially the same form it had been in effect for nearly a year without recognition in the industry of any applicability of it to fluxing scrap and apparently without any attempt to enforce its provisions as fixing maximum prices for such scrap. When on April 25, 1942 advice was given to petitioner that the prices fixed by the regulation for heavy melting steel constituted the maximum prices for fluxing scrap, the time for protesting the regulation had expired.

In the amendatory legislation of June 30, 1944 Congress removed entirely the time limitation upon the right to file protest in brief but unequivocal and sweeping language. Since it thus undertook to remove the only bar created by express language, the implication is not permissible that Congress intended to leave another bar to defeat the purpose of its own action. The impending loss of valuable rights of which petitioner complains is traceable directly to the sixty day limitation period, yet respondent urges, in practical effect, that his own intervening action, con-

cerning which petitioner was entirely helpless, denies any relief to petitioner from the removal of that limitation. The additional bar, sustained by the court below, was not an element of administrative practice when Congress amended the Act in June 1944 (see subhead (c) *infra*) nor, so far as appears, was it otherwise within the thinking of anyone having to do with the legislation.

The bar urged on behalf of the respondent is so discriminatory and unfair that intention on the part of Congress to create it cannot be imputed in the absence of clear language requiring it. In the words of the dissenting opinion in the *Thomas Paper Stock Company* case, "This bar may be raised at any time without any notice by one of the parties to the litigation. Moreover, the majority opinion completely obstructs the right of judicial review despite the existence of substantial rights dependent upon such review."

Under views adopted by the majority in the Emergency Court of Appeals the line is drawn at the point of amendment of the regulation. On the one side there is, under this view, absolute right to seek a declaration of invalidity of a regulation and retroactive nullification of the effect of it. On the other, the right is conditional and discretionary and only as an incident to enforcement proceedings (Sec. 204(e) of the Act; 50 U. S. C. App. 924(e)). There is no sound reason, we believe, why the power so to limit judicial review of his orders should be placed in the hands of the Administrator or why the right to review should be conditioned upon the fortuitous circumstance of amendment or failure to amend a regulation before protest of it is filed.

Time limitations are familiar in the law, of course, but only when they are clearly stated or can be readily ascertained. The idea is novel, indeed, that Congress would provide a time limitation upon a remedy which would vary from case to case in accordance with the progress of busi-

ness in the price administration and which could not be ascertained in advance of its expiration.

(c) When, in enacting legislation, Congress deals with existing law without changing it, legislative acceptance of the administrative construction of it is presumed. *Electric Battery Co. v. Shimadzu*, 307 U. S. 5, 14; *Willis v. Eastern Trust and Banking Co.*, 169 U. S. 295, 307-308; *Peaslee v. Dialogue*, 2 Pet. 1, 18. The bar now raised against petitioner must be found, if it exists at all, in the provisions of the original price control Act of January 30, 1942. As we understand the contentions no claim is made that it was added by amendment thereafter. The inference is inescapable, we submit, that the administrative practice was based upon the view that the Administrator had power to consider the merits of a protest at any time regardless of whether the claimed ground of invalidity had been removed before the protest was filed. At least he considered petitioner's protest twice without question as to his power to grant the relief sought. The second consideration is reflected by an opinion dated April 4, 1945 (R. 55-63) subsequent to the decision in the *Thomas Paper Stock Company* case, holding that the Administrator's power to grant relief "cannot be invoked by a protest which merely requests retroactive relief based upon an objection to a regulation which has already been met by its modification or rescission."

The procedure followed by the Administration in the *Thomas Paper Stock Company* case seems to have been the same as in the present case and no suggestion has been made on behalf of the Administrator that prior to April 1945 he declined to consider any protest on the ground of lack of power by reason of prior amendment of the regulation. Clearly he could not so decline to consider a protest consistently with his regulation defining the term "subject to" (Revised Procedural Regulation No. 1; *supra* 9 F. R. 5791).

The majority holding in the court below as reflected in the *Thomas Paper Stock Company* case rests in major part upon an unduly restricted view of the functions and duties of the Price Administrator. It is said that he may not be diverted from his all important task of price control to consider the validity of a past regulation. But the Administrator cannot avoid considering the validity of such "past regulations" as the one involved in this case and he makes no pretense that he can. The position of the Administrator has been made perfectly plain to this petitioner that if it violates this so-called "past" regulation the enforcement provisions of the statute will be invoked against it. The Administrator would not, of course, institute enforcement proceedings for violation of a regulation without prior determination as to the validity of the regulation in its proposed application. Thus the administrative duty of passing upon the validity of the regulation cannot be avoided. The only question is whether, to obtain such a determination, petitioner must violate the regulation and subject itself to the possibility of heavy penalties with no assurance of right to judicial review of the ruling on validity.

(d) The construction of the statute adopted by the Emergency Court of Appeals constitutes denial of reasonable opportunity to be heard, prohibited by the due process clause of the Constitution. Unless the remedy it invokes in this proceeding is available to it, petitioner has not and never has had any reasonable opportunity to test the validity of the regulation involved. During the sixty days after issuance of it on February 21, 1942 there was no reason for protest by petitioner since on the face of the regulation and, as we believe, under any reasonable construction of it, it fixed no price for fluxing scrap. It could not have been foretold, of course, that what we seek to show was an erroneous application of the regulation would be resorted to by the Administration in support of enforce-

ment proceedings and such proposed resort was not made known until the time for protest had expired. Whether the statute then provided any method for one situated as was petitioner to defend against enforcement proceedings on the grounds of invalidity is at least doubtful. If it did not, it was invalid for denial of due process, we submit. cf. *Yakus* v. *United States*, 321 U. S. 489 in which possible invalidity on such ground was suggested. Abolition thereafter of the time limitation on the filing of protest removed that possibility, unless there existed the additional bar raised in this case. Without such additional bar the absolute right to test the validity of a regulation was made coextensive with liability for violation of it, a result reasonably to have been intended by Congress. Indeed, the idea is shocking that Congress would provide criminal liability for violation of a regulation greater in scope than the right to test the validity of the regulation. With the additional bar raised here the same ground of unconstitutionality remains that was suggested in the *Yakus* case, a result not reasonably to have been intended by Congress.

The conditional right to test the validity of the regulation under the provisions of section 204(e) of the Act as amended on June 30, 1944 (50 U. S. C. App. 924(e)) does not remove the objection. That section provides that in a suit brought for violation of a regulation, the defendant may appeal to the discretion of the court in which the suit is pending for leave to challenge the validity of the regulation in the Emergency Court of Appeals. This alternative procedure permits imposition of penalties for violation of a regulation without an opportunity to test the validity of it and makes possible therefore, the imposition of penalties for violation of an invalid regulation. The opinion in the *Yakus* case clearly indicated that the statute may be construed so as to avoid this result:

CONCLUSION

It is respectfully submitted that for the reasons herein stated the judgment of the Emergency Court of Appeals should be reversed and the case remanded to that Court for decision upon the merits of the protest.

KEITH L. SEEGMILLER,
Counsel for Petitioner.

In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 400

UTAH JUNK COMPANY, PETITIONER

v.

CHESTER BOWLES, PRICE ADMINISTRATOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS

MEMORANDUM FOR THE RESPONDENT

This case arises out of the denial by the Price Administrator of a protest which petitioners filed with the Price Administrator on August 7, 1944. The protest set forth objections to the regulation establishing maximum prices for iron and steel scrap insofar as it failed to permit an extra allowance for processing scrap for use in lead smelting during the period from April 25, 1942 to February 10, 1943 (R. 1–12). Such an allowance was

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available under the regulation, upon application, from December 21, 1943, and petitioner was authorized to charge it from February 19, 1944 (R. 107–108). Among other grounds of objection to the failure of the adjustment to relate back to the period from April 25, 1942 to February 10, 1943, during which petitioner had made deliveries, petitioner claimed that the regulation was then invalid because of the absence of the allowance.

In the proceedings upon the complaint filed with the Emergency Court of Appeals following denial of the protest, petitioner relied solely upon the claim of invalidity, asserting that, if the regulation were held to be invalid during the period in question, its purchaser would be willing to pay the additional sum (R. 112). Since petitioner's attack was thus limited, and since petitioner did not challenge the validity of the regulation as of the time the protest was filed, the court below dismissed the complaint on the authority of its decision in the case of *Thomas Paper Stock Company et al.* v. *Bowles*, 148 F. (2d) 831 (E. C. A. 1945). The court held in that case "that an 'objection was not available to or properly included by the complainants in their protest to the Administrator because it involved a ground of invalidity which did not exist when the protest was filed,

having admittedly been corrected by the Administrator' prior to the filing of the protest" (R. 112). This Court has granted a petition for a writ of certiorari in the *Thomas Paper Stock* case (No. 67, present Term). Respondent believes that the court below correctly decided both the *Thomas Paper Stock* case and the present case. However, in view of ~~the~~ granting of the petition in the *Thomas Paper Stock* case, respondent does not oppose the petition in the present case.

Respectfully submitted.

HAROLD JUDSON,
Acting Solicitor General,

RICHARD H. FIELD,
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Office of Price Administration.

SEPTEMBER 1945.

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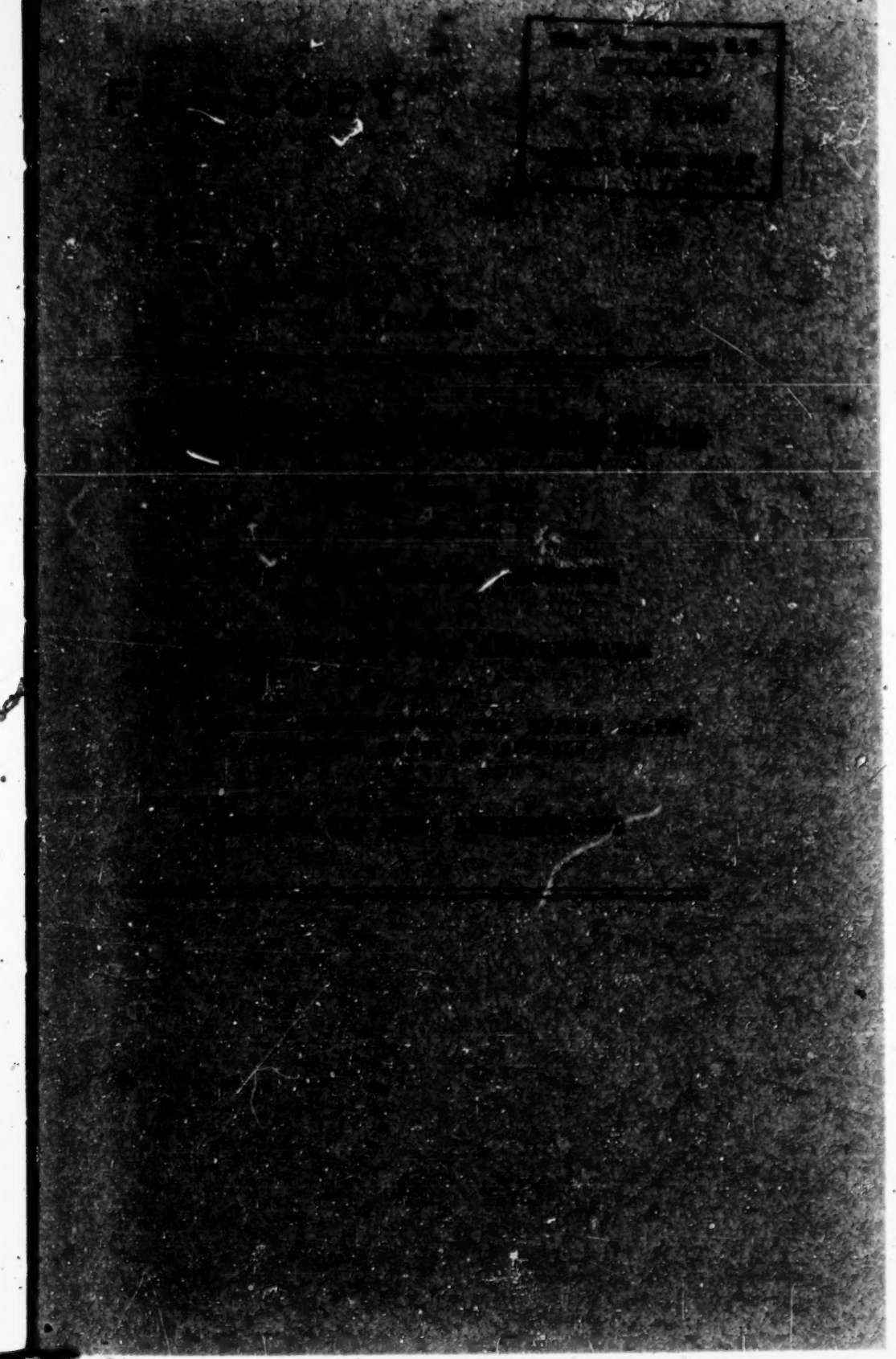

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In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 400

UTAH JUNK COMPANY, PETITIONER

v.

CHESTER BOWLES, PRICE ADMINISTRATOR

ON WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS

BRIEF FOR THE PRICE ADMINISTRATOR

OPINION BELOW

The opinion of the United States Emergency Court of Appeals is reported at 150 F. (2d) 963. The opinion of that court in the case of *Thomas Paper Stock Company et al.* v. *Bowles,* upon the authority of which the decision in the present case was rested, is reported at 148 F. (2d) 831, pending before this Court on certiorari, No. 67, at the present Term.

JURISDICTION

The judgment of the United States Emergency Court of Appeals was entered August 6, 1945

(R. 100). The petition for a writ of certiorari was filed September 5, 1945 and was granted November 5, 1945. Jurisdiction of this Court is invoked under Section 204 (d) of the Emergency Price Control Act of 1942, 56 Stat. 23, as amended by the Stabilization Extension Act of 1944, 58 Stat. 632; 50 U. S. C. App., Supp. IV, 924 (herein sometimes termed "the Act"), making applicable Section 240 of the Judicial Code, as amended (28 U. S. C. 347).

QUESTIONS PRESENTED

1. Whether under Section 203 (a) of the Emergency Price Control Act a protest may properly be filed against a maximum price regulation after the Price Administrator has corrected the regulation by removing the alleged ground of invalidity?

2. Whether the construction of the Act to deny the right to file a protest under the above circumstances deprives petitioner of due process of law.

STATUTE AND REGULATIONS INVOLVED

The pertinent provisions of the Emergency Price Control Act of 1942, as amended, appear in the Appendix, *infra*, p. 25–32.

The maximum price regulation involved and the pertinent amendments thereto appear in the Federal Register (6 F. R. 1767, 7 F. R. 1207, 2507, 8 F. R. 857, 9 F. R. 7330).

STATEMENT

Petitioner is engaged in the business of purchasing, preparing and selling scrap metal. It has the necessary equipment for preparing scrap for use in lead blast furnaces, which requires the cutting of ordinary scrap materials to pieces of small size. Scrap thus prepared is usually referred to as smelter fluxing scrap. Since the area in which petitioner operates is one of the most sparsely settled sections of the United States where available supplies of scrap metal are small, scrap dealers in that region have always experienced difficulty in securing material meeting smelter specifications. Therefore, petitioner found it necessary to cut the available scrap metal into the small pieces required by its customers who operate smelters (R. 1–5).

One of petitioner's customers is the United States Smelting, Refining and Mining Company (hereinafter referred to as the Smelting Company), which operates a lead blast furnace in the vicinity of Salt Lake City, and which has for many years secured its supplies of smelting fluxing scrap from petitioner (R. 25–26). The present controversy involves shipments of such specially prepared scrap by petitioner to the Smelting Company during the period April 25, 1942 to February 10, 1943. Petitioner billed those shipments at a price higher than the maximum price established at that time by adding to the maxi-

mum price a charge of $1.50 per gross ton for preparation of the scrap to smelter specifications (R. 27). The addition of such an allowance was not then permitted by the applicable maximum price regulations, and the Smelting Company did not pay it (R. 12). However, upon an application duly filed by petitioners on January 28, 1944, with the Salt Lake City Office, petitioner was authorized by that office, effective February 19, 1944, to add a premium of $1.50 per gross ton for preparation of steel scrap into smelting fluxing scrap. Petitioner's application did not contain any request for retroactive collection of the premium (R. 93–94).

On August 7, 1944 petitioner filed with the Price Administrator a protest against the Administrator's failure to authorize the collection of the premium for past sales. Petitioner requested authorization to collect from the Smelting Company the sum of $4,572.49, representing $1.50 per ton preparation charge for 3,048.33 tons shipped during the above-mentioned period (April 1942 to February 1943 (R. 13)). The Price Administrator denied the protest, whereupon petitioner filed in the Emergency Court of Appeals the complaint, the dismissal of which is involved here (R 9–10, 67).

The above statement summarizes the essential facts in this proceeding. A full understanding of this case may be facilitated by a more complete history of the regulatory action relating to

price control of scrap and its effect upon petitioner during the period of time involved here.

Maximum prices for iron and steel scrap were first established by Price Schedule No. 4, issued April 2, 1941 (6 F. R. 1767) under executive authority of the Price Stabilization Division of the Advisory Commission to the Council of National Defense, which later in 1941 was reorganized as the Office of Price Administration and Civilian Supply. After the enactment of the Emergency Price Control Act of 1942, and pursuant to Section 206 of that Act, the Schedule was reissued as Revised Price Schedule No. 4, Iron and Steel Scrap, and republished in the Federal Register on February 21, 1942 (7 F. R. 1207).

The price schedule, both as originally issued and as republished and as later amended (8 F. R. 858, 1958, contained in Section 1304.13 (f) a list of twenty-two definitions of certain grade specifications of scrap, the first two items being designated as No. 1 and No. 2 heavy melting steel.[1] It also provided that special preparation charges might not be added to the maximum

[1] (1) No. 1 *heavy melting steel.*—Clean wrought iron or steel scrap ¼ inch and over in thickness, not over 18 inches in width and not over 5 feet in length. Individual pieces must be free from attachments and so cut as to lie flat in the charging box. May include heavy forgings, forge butts, billet, bloom, slab or bar crops not conforming to chemical analysis required for electric furnace or acid open hearth use. May include new mashed pipe ends, original diameter 4 inches and over. May not include auto body and fender stock.

(2) No. 2 *heavy melting steel.*—Wrought iron or steel

prices for the listed specifications.[2] However, by an amendment effective March 31, 1942 this prohibition was modified to permit individual sellers to apply to the Office of Price Administration for authorization to add preparation charges to the established maximum prices.[3]

In April 1942 a representative of the Office of Price Administration inspected petitioner's books and records and advised petitioner that the maximum prices for No. 1 and No. 2 heavy melting steel were applicable to petitioner's shipments of smelting fluxing scrap to the Smelting Company and that no premium could be added for preparing scrap to smelter specifications (R. 26). In spite of this advice, petitioner continued to bill the Smelting Company at prices higher than

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scrap, black or galvanized, ⅛ inch and over in thickness; not over 18 inches in width and not over 5 feet in length (uncut bumpers and front axles of passenger automobiles, and uncut rear ends of passenger automobiles, free of wheels and brake assemblies and drained of oil, may be included even though over 5 feet in length). Individual pieces must be free from attachments and so cut as to lie flat in the charging box. May include pipe; heavy oil field or similar cable not less than 1 inch in diameter and cut to lengths of 3 feet or less; and car sides and light plate cut 15 inches by 15 inches or under. May not include auto body and fender stock.

[2] Section 1304.13(a), Note 6, of RPS No. 4, provided: "In no case may special preparation charges be added to the prices listed above." (7 F. R. 1210.)

[3] Amendment No. 2 to RPS No. 4 changed the provision quoted above as follows: "Except upon prior approval by the Office of Price Administration, no special preparation charges may be added to the prices listed above." (7 F. R. 2507.)

the then established ceilings, but did not collect the overcharges (R. 4). To insure compliance with this and other provisions of the price schedule, the Administrator, in November 1942, brought an injunction suit against petitioner in the United States District Court for the District of Utah to restrain petitioner from selling or offering to sell iron or steel scrap at prices in excess of those fixed by Revised Price Schedule No. 4. This proceeding was terminated in February 1943 by the issuance of a consent decree (R. 64–66).

In May 1942 and repeatedly thereafter during 1942 and 1943 petitioner, in conversations with the officials of the Salt Lake City Office of the Office of Price Administration, took the position that the maximum prices established for heavy melting steel scrap could not be properly applied to smelting fluxing scrap (R. 27). However, petitioner was advised that the Salt Lake City Office had no authority to modify the price schedule, and that relief could come only upon application to the Price Administrator in Washington, D. C. (R. 62). Nevertheless, petitioner failed to address any communication to the Administrator (R. 63). In November 1942 the Smelting Company filed with the Office of Price Administration a petition for amendment[4] of Revised Price Schedule No. 4

[4] Section 20 (a) of Revised Procedural Regulation No. 1, issued by the Price Administrator, provides that:

> A petition for amendment may be filed at any time by any person subject to or affected by a provision of a

requesting authorization to pay in the future an extra preparation charge to its suppliers of smelting fluxing scrap. Attached to that petition was an affidavit from petitioner's president stating that the premium requested was necessary to cover the cost of cutting up scrap for smelting use in lead blast furnaces (R. 63).

In January 1943 the Administrator issued Amendment No. 10 to Revised Price Schedule No. 4 (8 F. R. 857) which established a new grade of steel scrap entitled "Item 23, Foundry Steel, 1 foot and under,"[8] and authorized a premium of $1.50 per gross ton over and above the maximum price for No. 1 heavy melting steel if such "foundry steel" was sold for use by electric furnaces, acid open hearth and foundry use requiring special preparation.

This new grade established by Amendment No. 10 to Revised Price Schedule No. 4 corresponded more closely to smelter specifications than

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maximum price regulation. A petition for amendment shall propose an amendment of general applicability and shall be granted or denied solely on the merits of the amendment proposed. The denial of a petition for amendment is not subject to protest or judicial review under the Act.

[8] The specifications for this new grade read as follows: "23. Foundry steel, 1 foot and under. Steel scrap 1/8 inch and over in thickness, not over 1 foot in length or width. Individual pieces must be free from attachments. May not include nonferrous metals, metal coated material, cast or malleable iron, wrought iron, pipe, body and fender stock, cable, enameled galvanized material."

No. 1 and No. 2 heavy melting steel in that as to thickness and width it called for material of the same size as that needed for smelting fluxing scrap. Therefore, shortly after the issuance of Amendment No. 10, the Administrator, in reply to the petition for amendment previously filed by the Smelting Company, stated that the premium provided by the Amendment should be adequate to compensate dealers selling to the Smelting Company for the additional cost of preparation and that the petition should be denied insofar as relief was not granted by the amendment (R. 63).

Subsequently it appeared that the new specification still did not meet petitioner's requirements because it excluded from the classification of foundry steel certain materials (such as pipe and cable) which were not objectionable from the point of view of the Smelting Company (R. 57). Nevertheless, petitioner again failed to avail itself of any of the administrative procedures provided for applicants seeking price increases although it knew that relief could come only from the Price Administrator in Washington. However, the problem was submitted by the Office of Price Administration to the Industry Advisory Committee on the iron and steel scrap industry at a meeting held in September 1943. The Committee was of the opinion that the question was of minor importance and that it should be handled on the basis of individual applications (R. 62). Accordingly, the Price Administrator, in December 1943, delegated to the

Regional Office of the Office of Price Administration in Denver, Colorado, whose jurisdiction includes the states of Utah and Montana where almost all lead blast furnaces are located, the authority to permit, upon individual application under Section 1304.13 (a) of Revised Price Schedule No. 4, a premium of $1.50 per gross ton for preparing and cutting heavy melting steel scrap to smelter specifications (R. 62). On January 28, 1944 petitioner addressed such an application to the Salt Lake City Office, requesting relief, but without any reference to past shipments of smelting fluxing scrap (R. 93). The application was promptly granted by the Salt Lake City Office on February 19, 1944 and confirmed by the National Office on April 5, 1944 (R. 6, 94). During the same period, similar applications were filed by, and granted to three other dealers in Utah, seven in Montana, and one in Texas (R. 58). Finally, on June 30, 1944, Revised Price Schedule No. 4 was revised and reissued as Maximum Price Regulation No. 4 (9 F. R. 7330). For the sake of administrative convenience, that regulation substituted for the individual authorizations referred to above a general provision permitting non-ferrous smelters to pay an extra preparation charge of $1.50 per ton for cutting heavy melting steel scrap to the small sizes required by them.*

* Section 3 (c) (2) of Maximum Price Regulation No. 4: "(2) Nonferrous smelters may pay an extra charge of $1.50

It thus appears that prior to the filing of its formal protest on August 7, 1944, the only formal document ever filed by petitioner requesting a price increase for preparing smelting fluxing scrap was the application of January 28, 1944, addressed to the Salt Lake City Office, which requested only prospective relief and did not refer at all to the price received by petitioner for the shipments made between April 1942 and February 1943, the sole issue involved in the protest.

SUMMARY OF ARGUMENT

Section 203 (a) of the Emergency Price Control Act, as amended, does not authorize the filing of a protest attacking the validity of a maximum price regulation after the alleged invalid provision has been removed from the regulation by an amendment duly issued by the Price Administrator. A construction of the section which would allow the filing of a protest under such circumstances would countenance a departure from the purpose of the protest procedure and nullify express limitations imposed by the Congress.

In the present case petitioner had ample time and opportunity to file a protest objecting to the validity of the regulation after it was notified by the Office of Price Administration that the

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per gross ton for preparing Grade 2 (No. 2 heavy melting steel) to a length of two feet or less, and a width of 15 inches or less."

regulation was considered to be applicable to petitioner's smelting scrap. Petitioner having failed to file a timely protest, the case falls within the principle announced in *Yakus* v. *United States*, 321 U. S. 414, wherein this Court held that the Emergency Price Control Act was not unconstitutional in denying the right to challenge the validity of a regulation in that proceeding after the defendant's opportunity to so challenge the regulation had expired. The case does not, therefore, give rise to any substantial constitutional problem.

The relief sought by petitioner in this proceeding, a declaration that the regulation was invalid, is equitable in nature, and, under the doctrine of laches, petitioner's long delay in seeking the relief should bar it from obtaining the declaration at this late date.

ARGUMENT

THE COURT BELOW PROPERLY CONSTRUED SECTION 203 (a) OF THE ACT TO PRECLUDE THE FILING OF A PROTEST AFTER THE OBJECTION SOUGHT TO BE RAISED HAD BEEN CORRECTED

The issue in this case is whether Section 203 and Section 204 of the Emergency Price Control Act, as amended, authorized petitioner to file a protest seeking only a determination that Revised Price Schedule No. 4 was invalid during a period which ended eighteen months before the protest was filed, the alleged ground of invalidity having

been cured six months before the protest was filed.[7]

Apart from a consent decree entered on February 17, 1943, no enforcement proceedings are pending against the petitioner. Petitioner does not challenge the adequacy of the preparation charge which it has been permitted to collect since February 19, 1944, nor the validity of the regulation after that date. The only interest alleged by petitioner is that it now desires to collect from its buyer the preparation charge with

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[7] The original protest also raised a question as to whether the Administrator arbitrarily refused to make retroactive for the past period the order issued on February 19, 1944, which authorized the petitioner to make the preparation charge. Under certain types of adjustment provisions, the Administrator has undertaken to make the increased price available with respect to past transactions. See *Buckley, Dement* v. *Bowles*, 143 F. (2d) 877 (E. C. A.); *Valentine & Sons* v. *Bowles*, 151 F. (2d) 343 (E. C. A.); *Goodman et al.* v. *Bowles*, 138 F. (2d) 917 (E. C. A.). It is highly doubtful that the adjustment provision under which petitioner was given relief could have been construed to authorize making the relief retroactive, since it provided: "Except upon *prior approval* by the Office of Price Administration, no special preparation charges may be added to the prices listed above." (7 F. R. 2507 (italics added)). In any event, petitioner at no time before the filing of the protest asked that the authorization be extended to transactions long completed, and at the argument before the Emergency Court of Appeals, petitioner expressly abandoned any reliance upon the claim that discretionary authority should have been exercised by the Administrator to give the relief sought.

respect to deliveries made between April 25, 1942, and February 10, 1943. It appears that during that period petitioner billed its purchaser at a price inclusive of the preparation charge, but the purchaser paid only the maximum price authorized by the regulation (R. 27, 70).

The Emergency Court of Appeals, following its decision in the case of *Thomas Paper Stock Co.* v. *Bowles*, 148 F. (2d) 831, pending on a writ of certiorari, No. 67, at the present Term dismissed petitioner's complaint on the ground that the protest was untimely, the only objection to the regulation raised having already been met. The gravamen of the decision of the Emergency Court of Appeals in the *Thomas Paper Stock Co.* case is that the protest and judicial review provisions of the Act do not contemplate the Price Administrator's assumption of the burden of passing upon the validity of objections to regulations issued by him after the basis for the objection has been removed by amendment or supersession of the regulations. It is our position that the construction placed upon the Act by the Emergency Court of Appeals is correct. The reasons for this conclusion are set out more fully in the Price Administrator's brief in *Collins, et al.* v. *Bowles*, No. 393, at the present Term. Briefly, they are that the procedure for administrative and judicial review of regulations

and orders issued by the Price Administrator was formulated to provide an expeditious method for securing the correction of price regulations. The statutory requirement that objections must first be presented to the Administrator before they may be considered by the Emergency Court of Appeals, the authority given to the Administrator to modify the regulation even while a complaint involving its validity is pending before the court, and the numerous provisions designed to assure prompt action by the Administrator (sections 204 (a), 203 (a) of the Act), all point to the conclusion that the protest procedure was conceived and designed for the purpose of securing review of regulations which are controlling the current operations of industries.[8] This conclusion is reinforced by the fact that the "basic theory" of the statute as originally passed was "that there is an unqualified obligation to comply with regulations unless and until they have been held invalid." (Report of the Senate Banking and Currency Committee to accompany S. 1764, S. Rep. No. 922, 78th Cong., 2d Sess., p. 12). Throughout the debates on the Stabilization Extension Act of 1944, the Congressional understanding of this principle was explicitly revealed.[8]

[8] See, for example, the debates in the Senate on June 6, 1944, 90 Cong. Rec., p. 5370, and the debates in the House of Representatives on June 13, 1944, 90 Cong. Rec., p. 5869.

By the addition of paragraph (e) to Section 204 of the Act, the Congress substantially modified this broad principle of the operation of the Act. This amendment explicitly provides for the dismissal of enforcement proceedings based upon the violation of a provision of a regulation if the provision is determined to be invalid by the Emergency Court of Appeals. But this modification of the original principle of the statute does not require any change in the conclusion that protests may not properly be filed after the objection has been cured. Indeed, the presence of Section 204 (e) in the statute reinforces the conclusion. That section provides a special method by which defendants in enforcement proceedings may obtain a determination from the Emergency Court of Appeals which, if favorable to them, provides a complete defense to the enforcement proceeding. The availability of that method is conditional upon either the filing of a valid protest before the institution of the enforcement proceeding or the making of a showing to the court having jurisdiction of the enforcement proceeding that there was reasonable excuse for the defendant's not having filed a protest. In either event a protest or complaint must be filed, conforming to specified requirements and relevant to the issue in the enforcement proceeding. To allow the filing of protests under Section 203 (a) after the correction of an objection-

able provision would depart from the purpose of the protest procedure and nullify the limitations imposed by the Congress. Moreover, such a protest in many cases would produce an effective defense only in the fortuitous circumstance of completion of the protest and review proceeding before the enforcement proceeding has resulted in a final judgment; for Section 204 (e) prohibits the stay of enforcement proceedings because of protests filed after the enforcement proceedings have been instituted.

The provision in Section 203 (a) of the Act that a protest may be filed "at any time" does not conflict with the foregoing conclusion. That phrase was inserted by the Stabilization Extension Act to remove the previous requirement that protests must be filed within sixty days of the issuance of a regulation, unless based upon grounds arising afterward.[9] The amendment does not change the pre-existing limitation, inherent in the structure of the Act, that a protest can be filed only to raise an objection which is applicable to the regulation at the time of filing. Petitioner's contention is refuted by the provision of the statute which authorizes the filing of a protest only by a person "subject to" a regulation, thus limiting the class of those who, within the broad field of the impact of a price regula-

[9] See H. Rep. No. 1593, 78th Cong., 2d Sess., p. 5; H. Rep. No. 1698, 78th Cong., 2d Sess., p. 21.

tion, may file a protest against it.[10] The natural meaning is that the provision challenged must regulate the business operations of the challenger at the time he files his protest.

The application to the facts of the present case of the principle of construction announced by the Emergency Court of Appeals in the *Thomas Paper Stock Co.* case does not raise any substantial constitutional problem, or even any substantial question of fairness in administration. Petitioner is not being subjected to any proceedings looking to the imposition of penalties, civil or criminal. This entire proceeding represents a belated effort to attempt to collect from its buyer, in connection with transactions long past, additional consideration in excess of the maximum lawful price applicable at the time when the transactions were consummated by the sale and delivery of the goods. In April 1942, petitioner was advised by officials of the Office of Price Administration of the maximum price which that Office believed petitioner might lawfully charge for its sales of smelting scrap. No formal action was taken by petitioner looking toward the modification of the price schedule to authorize it to make an additional charge for preparation until

[10] Cf. *Buka Coal Company* v. *Brown*, 133 F. (2d) 949 (E. C. A.). The original price control bill as it passed the House of Representatives authorized any person "aggrieved by" a regulation to appeal to a Board of Administrative Review. H. R. 5990, 77th Cong., 1st sess., Sec. 204 (b).

January 28, 1944, when it filed an application. And not until August 7, 1944, did it file a protest suggesting that the price schedule was invalid during the period prior to the authorization.

Petitioner cannot properly contend that when it was advised of the applicable maximum price it was precluded from filing a protest because the regulation had become effective under the Act more than sixty days before.[11] The sixty-day limitation was subject to an exception in the case of grounds arising after the expiration of the sixty-day period of limitation. Petitioner contended that the prices claimed by the Office of Price Administration to be applicable to the scrap in question were not properly applicable (R. 5). Under the original Act the Administrator always recognized, and the Emergency Court of Appeals held, that the resolution of an ambiguity in the meaning of a price schedule or regulation constituted a new ground for protest. *Galban Lobo Co.* v. *Henderson*, 132 F. (2d) 150 (E. C. A.), certiorari denied, 318 U. S. 756; *United States Gypsum Co.* v. *Brown*, 137 F. (2d) 803 (E. C. A.), certiorari denied, 320 U. S. 799; *Marlene Linens* v. *Bowles*, 144 F. (2d) 874 (E. C. A.). Consequently, if the price schedule was considered from

[11] Revised Price Schedule No. 4 had been issued before the Act became effective. Pursuant to Section 206, it took effect as if issued under Section 2 of the Act upon the Price Administrator's taking office. Section 203 (a) as originally enacted required protests to be filed against such price schedule within sixty days of their becoming effective under the Act.

its inception to be entirely clear, petitioner had adequate time after the effective date of the price schedule and before the expiration of the sixty-day limitation in the Act in which to file a protest, the schedule having been issued under executive authority in April of 1941, nearly a year prior to the passage of the Act. On the other hand, if the price schedule was found to be ambiguous, petitioner was permitted by the Act to file a protest after it was advised of the interpretation placed on the schedule by the Office of Price Administration, notwithstanding the expiration of the sixty-day period.

Petitioner, however, delayed filing its protest until more than two years after it was advised of the construction placed by the Office of Price Administration upon the price schedule, eighteen months after the end of the period as to which it seeks to have the price schedule declared invalid, and seven months after petitioner's basis for objecting to the price schedule was fully met by the authorization to charge the premium as to future transactions. Hence, the case falls well within the principle announced in *Yakus* v. *United States*, 321 U. S. 414, wherein this Court held that the Act was not unconstitutional in denying to a defendant in a criminal proceeding for the violation of a maximum price regulation the right to challenge the validity of the regulation in that proceeding after the defendant's opportunity to challenge the validity of the regulation had ex-

pired. The Court there, in considering the difficult problem of the impact of the exclusive jurisdiction provisions on criminal prosecutions for violation of the regulations, said at page 444:

> No procedural principle is more familiar to this Court than that a constitutional right may be forfeited in criminal as well as civil cases by the failure to make timely assertion of the right before a tribunal having jurisdiction to determine it.

There is no prosecution here and no involvement of the question reserved by the Court as to the effect of the statute upon "one who is forced to trial and convicted of violation of a regulation, while diligently seeking determination of its validity by the statutory procedure * * *." No reasonable basis has been suggested for contending that any substantial constitutional problem is raised by the construction of the Act for which we contend, and we are unable to discern any.

Under the facts of this case, even apart from any question of the construction of the provisions of the Act authorizing the filing of protests, it would appear that petitioner would be barred by the general doctrine of laches from raising the issue of validity in a protest filed so late. *Hays* v. *Port of Seattle,* 251 U. S. 233; *Martin* v. *Gray,* 142 U. S. 236; *McNeil* v. *McNeil,* 170 Fed. 289 (C. C. A. 9th). In the absence of the exclusive jurisdiction provisions of Section 204 (d) of the Act, the petitioner in its present situation might

seek to enjoin the enforcement of the price schedule by the Administrator or to obtain a judgment declaring the invalidity of the price schedule during the period in question. Since a declaratory judgment action is essentially equitable in nature (*Great Lakes Dredge and Dock Co.* v. *Huffman*, 319 U. S. 293), it is clear that the defense of laches would be available in any such suit; and the defense should be equally available here in a statutory proceeding designed to provide a substitute for conventional methods of review. The Emergency Court of Appeals has suggested that the Administrator may invoke the defense of laches when the filing of a protest is unreasonably delayed. *R. E. Schanzer, Inc.* v. *Bowles*, 141 F. (2d) 262 (E.C.A.).[12]

The facts of this case demonstrate forcefully the soundness of the interpretation placed upon Section 203 (a) of the Act by the Emergency Court of Appeals in the *Thomas Paper Stock Co.* case and in this case. Since May of 1942, when the General Maximum Price Regulation became effective, virtually the entire economy has been under price control. More than 600 maximum price regulations have been issued by the Price Administrator and most of them have frequently

[12] In that case the Emergency Court of Appeals held that the Administrator improperly construed Section 203 (a) of the Act to require that protests based upon grounds arising after the issuance of a regulation must be filed within sixty days after the grounds arose, but that a protest based upon such grounds might be filed "at any time."

been amended and revised to improve the effectiveness of the controls and to relieve industries and individual companies from unwarranted hardship. Literally, multitudes of transactions have been affected by these regulations. The administrative burden would be utterly unbearable if sellers and buyers involved in those transactions could compel the Administrator to examine and declare the validity of regulations at selected periods in the past. The magnitude of the burden can be appreciated only if it is realized that in most cases such issues do not turn upon simple questions of law, but upon complex economic facts and relationships which are in a constant state of flux under the pressures of a war economy.[13] The problems are so complex and the area controlled so great that the full energies of any administrative staff that could be assembled would necessarily be taxed to keep current controls on an equitable and effective basis. The wholesale diversion of effort implicit in the construction for which petitioner contends

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[13] See, for example, *Cudahy Brothers Co.* v. *Bowles*, 142 F. (2d) 468 (E. C. A.); *Flett* v. *Bowles*, 142 F. (2d) 559 (E. C. A.); *Safeway Stores, Inc.* v. *Bowles*, 145 F. (2d) 836 (E. C. A.), certiorari denied, 324 U. S. 847; *Armour & Co.* v. *Bowles*, 148 F. (2d) 529 (E. C. A.), certiorari denied, 325 U. S. 871; *Vitamins, Inc.* v. *Bowles*, 149 F. (2d) 497 (E. C. A.); *Hudson Valley Fuel Corp.* v. *Bowles*, 150 F. (2d) 415 (E. C. A.).

Similar considerations are involved in the review of maximum rent regulations. See, for example: *Equitable Trust Co.* v. *Bowles*, 143 F. (2d) 735 (E. C. A.).

emphasizes the unsoundness of that construction. To a limited extent, the Congress has required such a diversion of effort. By virtue of Section 204 (e) defendants in enforcement proceedings may litigate the validity of regulations they are charged with violating despite the absence of current vitality in the problems presented. This legislation was enacted to set at rest a doubt as to whether the Act in its original form harbored a serious constitutional defect. No substantial considerations have been advanced to warrant the impositon of the incomparably greater administrative burden involved in the rejection of the construction of the Act which has been followed by the Emergency Court of Appeals.

CONCLUSION

The judgment of the Emergency Court of Appeals is correct and should be affirmed.

Respectfully submitted,

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FEBRUARY 1946.

APPENDIX

Pertinent provisions of the Emergency Price Control Act of 1942, 56 Stat. 23, as amended by the Stabilization Extension Act of 1944, 58 Stat. 632, 50 U. S. C. App., Supp. IV, 901–945, are as follows:

SEC. 2 (i) Nothing in this Act shall be construed (1) as authorizing the elimination or any restriction of the use of trade and brand names; (2) as authorizing the Administrator to require the grade labeling of any commodity; (3) as authorizing the Administrator to standardize any commodity, unless the Administrator shall determine, with respect to such standardization, that no practicable alternative exists for securing effective price control with respect to such commodity; or (4) as authorizing any order of the Administrator fixing maximum prices for different kinds, classes, or types of a commodity which are described in terms of specification or standards, unless such specifications or standards were, prior to such order, in general use in the trade or industry affected, or have previously been promulgated and their use lawfully required by another Government agency.

* * * * * *

SEC. 203. (a): *At any time after the issuance of any regulation or order under section 2, or in the case of a price schedule, at any time after the effective date thereof*

specified in section 206,[1] any person subject to any provision of such regulation, order, or price schedule may, in accordance with regulations to be prescribed by the Administrator, file a protest specifically setting forth objections to any such provision and affidavits or other written evidence in support of such objections.[2] Statements in support of any such regulation, order, or price schedule may be received and incorporated in the transcript of the proceedings at such times and in accordance with such regulations as may be prescribed by the Administrator. Within a reasonable time after the filing of any protest under this subsection, but in no event more than thirty days after such filing,[3] the Administrator shall either grant or deny such protest in whole or in part, notice such protest for hearing, or provide an opportunity to present further evidence in connection there-

[1] As amended by sec. 106 of Stabilization Extension Act of 1944. The section formerly read, in place of italicized language: "Within a period of sixty days after the issuance of any regulation or order under section 2, or in the case of a price schedule, within a period of sixty days after the effective date thereof specified in section 206."

[2] As amended by sec. 106 of Stabilization Extension Act of 1944. At this point the following language was stricken out: "At any time after the expiration of such sixty days any persons subject to any provision of such regulation, order, or price schedule may file such a protest based solely on grounds arising after the expiration of such sixty days."

[3] As amended by sec. 106 of Stabilization Extension Act of 1944. At this point the following language was stricken out: "or ninety days after the issuance of the regulation or order (or in the case of a price schedule, ninety days after the effective date thereof specified in section 206) in respect of which the protest is filed, whichever occurs later."

with. In the event that the Administrator denies any such protest in whole or in part, he shall inform the protestant of the grounds upon which such decision is based, and of any economic data and other facts of which the Administrator has taken official notice.

* * * * * *

SEC. 204. (a) Any person who is aggrieved by the denial or partial denial of his protest may, within thirty days after such denial, file a complaint with the Emergency Court of Appeals, created pursuant to subsection (*e*), specifying his objections and praying that the regulation, order, or price schedule protested be enjoined or set aside in whole or in part. A copy of such complaint shall forthwith be served on the Administrator, who shall certify and file with such court a transcript of such portions of the proceedings in connection with the protest as are material under the complaint. Such transcript shall include a statement setting forth, so far as practicable, the economic data and other facts of which the Administrator has taken official notice. Upon the filing of such complaint the court shall have exclusive jurisdiction to set aside such regulation, order, or price schedule, in whole or in part, to dismiss the complaint, or to remand the proceeding: *Provided*, That the regulation, order, or price schedule may be modified or rescinded by the Administrator at any time notwithstanding the pendency of such complaint. No objection to such regulation, order, or price schedule, and no evidence in support of any objection thereto, shall be considered by the court, unless such objection shall have been set forth by the

complainant in the protest of such evidence shall be contained in the transcript. If application is made to the court by either party for leave to introduce additional evidence which was either offered to the Administrator and not admitted, or which could not reasonably have been offered to the Administrator or included by the Administrator in such proceedings, and the court determines that such evidence should be admitted, the court shall order the evidence to be presented to the Administrator. The Administrator shall promptly receive the same, and such other evidence as he deems necessary or proper, and thereupon he shall certify and file with the court a transcript thereof and any modification made in the regulation, order, or price schedule as a result thereof; except that on request by the Administrator, any such evidence shall be presented directly to the court.

(b) No such regulation, order, or price schedule shall be enjoined or set aside, in whole or in part, unless the complainant establishes to the satisfaction of the court that the regulation, order, or price schedule is not in accordance with law, or is arbitrary or capricious. The effectiveness of a judgment of the court enjoining or setting aside, in whole or in part, any such regulation, order, or price schedule shall be postponed until the expiration of thirty days from the entry thereof, except that if a petition for a writ of certiorari is filed with the Supreme Court under subsection (d) within such thirty days, the effectiveness of such judgment shall be postponed until an order of the Supreme Court denying such

petition becomes final, or until other final disposition of the case by the Supreme Court.

* * * * * *

(d) Within thirty days after entry of a judgment or order, interlocutory or final, by the Emergency Court of Appeals, a petition for a writ of certiorari may be filed in the Supreme Court of the United States, and thereupon the judgment or order shall be subject to review by the Supreme Court in the same manner as a judgment of a circuit court of appeals as provided in section 240 of the Judicial Code, as amended (U. S. C., 1934 edition, title 28, sec. 347). The Supreme Court shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this subsection. The Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any regulation or order issued under section 2, of any price schedule effective in accordance with the provisions of section 206, and of any provision of any such regulation, order, or price schedule. Except as provided in this section, no court, Federal, State, or Territorial, shall have jurisdiction or power to consider the validity of any such regulation, order, or price schedule, or to stay, restrain, enjoin, or set aside, in whole or in part, any provision of this Act authorizing the issuance of such regulations or orders, or making effective any such price schedule, or any provision of any such regulation, order, or price

schedule, or to restrain or enjoin the enforcement of any such provision.

(e) (1) Within thirty days after arraignment, or such additional time as the court may allow for good cause shown in any criminal proceeding, and within five days after judgment in any civil or criminal proceeding, brought pursuant to section 205 involving alleged violation of any provision of any regulation or order issued under section 2 or of any price schedule effective in accordance with the provisions of section 206, the defendant may apply to the court in which the proceeding is pending for leave to file in the Emergency Court of Appeals a complaint against the Administrator setting forth objections to the validity of any provision which the defendant is alleged to have violated. The court in which the proceeding is pending shall grant such leave with respect to any objection which it finds is made in good faith and with respect to which it finds there is reasonable and substantial excuse for the defendant's failure to present such objection in a protest filed in accordance with section 203 (a). Upon the filing of a complaint pursuant to and within thirty days from the granting of such leave, the Emergency Court of Appeals shall have jurisdiction to enjoin or set aside in whole or in part the provision of the regulation, order, or price schedule complained of or to dismiss the complaint. The court may authorize the introduction of evidence, either to the Administrator or directly to the court, in accordance with subsection (a) of this section. The provisions of subsections (b), (c), and (d) of this section shall be applicable with respect to any proceeding insti-

tuted in accordance with this subsection.

(2) In any proceeding brought pursuant to section 205 involving an alleged violation of any provision of any such regulation, order or price schedule, the court shall stay the proceeding—

(i) during the period within which a complaint may be filed in the Emergency Court of Appeals pursuant to leave granted under paragraph (1) of this subsection with respect to such provisions;

(ii) during the pendency of any protest properly filed by the defendant under section 203 prior to the institution of the proceeding under section 205, setting forth objections to the validity of such provision which the court finds to have been made in good faith; and

(iii) during the pendency of any judicial proceeding instituted by the defendant under this section with respect to such protest or instituted by the defendant under paragraph (1) of this subsection with respect to such provision, and until the expiration of the time allowed in this section for the taking of further proceedings with respect thereto.

Notwithstanding the provisions of this paragraph, stays shall be granted thereunder in civil proceedings only after judgment and upon application made within five days after judgment. Notwithstanding the provisions of this paragraph, in the case of a proceeding under section 205 (a), the court granting a stay under this paragraph shall issue a temporary injunction or restraining order enjoining or restraining, during the period of the stay, violations by the defendant of any provision of the regulation, order, or price schedule involved in

the proceeding. If any provision of a regulation, order, or price schedule is determined to be invalid by judgment of the Emergency Court of Appeals which has become effective in accordance with section 204 (b), any proceeding pending in any court shall be dismissed, and any judgment in such proceeding vacated, to the extent that such proceeding or judgment is based upon violation of such provision. Except as provided in this subsection, the pendency of any protest under section 203, or judicial proceeding under this section, shall not be grounds for staying any proceeding brought pursuant to section 205; nor, except as provided in this subsection, shall any retroactive effect be given to any judgment setting aside a provision of a regulation or order issued under section 2 or of a price schedule effective in accordance with the provisions of section 206.[4]

[4] Entire subsection (e) added by sec. 107 (b) of Stabilization Extension Act of 1944.

U. S. GOVERNMENT PRINTING OFFICE: 1944

SUPREME COURT OF THE UNITED STATES.

No. 400.—October Term, 1945.

Utah Junk Company, Petitioner, vs. Paul A. Porter, Price Administrator. } On Writ of Certiorari to the United States Emergency Court of Appeals.

[April 22, 1946.]

Mr. Justice Frankfurter delivered the opinion of the Court.

This is one of a series of cases calling for the construction of amendments to the Emergency Price Control Act of 1942.

Section 203 of that Act, 56 Stat. 23, 31; 50 U. S. C. App. § 923, confined within narrow limits the right to protest to the Administrator against a price schedule promulgated by him. The Stabilization Act of 1944, 58 Stat. 632, 638; 50 U. S. C. § 923, greatly liberalized this right to protest. The view taken by the United States Emergency Court of Appeals of the scope of this liberalization, 150 F. 2d 963, based on its prior ruling in *Thomas Paper Stock Co. v. Bowles*, 148 F. 2d 831, led us to bring the case here, 326 U. S. —.

The facts relevant to the immediate issue can be quickly stated. The Administrator established maximum prices for iron and steel scrap. Revised Price Schedule No. 4, 7 Fed. Reg. 1207 (February 21, 1942). This schedule, § 1304.13(f), *id.* at 1212, made no special provision for smelter fluxing scrap, scrap prepared for use in lead blast furnaces. Petitioner, a scrap dealer, operating in Utah, was engaged in the preparation and sale of fluxing scrap. Between April 25, 1942 and February 10, 1943, it sold a considerable amount of fluxing scrap to one of its customers, for which it was to be paid, in addition to the ceiling price for the scrap, $1.50 per ton for preparing the scrap. Inasmuch as the petitioner had been notified by the Office of Price Administration that such a charge was a violation of the Price Schedule, it merely billed its customer for the additional $1.50 per ton but abstained from collecting it, so as to avoid the penal provisions of the Price Control Act.

The controversy concerns petitioner's lawful right to collect this processing charge as previously agreed upon between the parties

to the contract. Claiming that the Price Schedule governing the sales in question was invalid insofar as it failed to permit an allowance for processing, petitioners filed a protest with the Administrator. The Administrator and the Emergency Court of Appeals ruled that the protest came too late. It was timely, in any event, only if the amendment to § 203(a) of the Price Control Act of 1942 made by § 106 of the Stabilization Act of 1944, 58 Stat. 632, 638, can be invoked after the ground of objection to a price schedule had been prospectively removed.[1] For the Administrator had completely met petitioner's objection by the time that the petitioner could avail itself of whatever enlarged right of protest the 1944 amendments conferred. The Administrator did so, in part, on December 21, 1943, by authorizing a Regional Office of the Price Administration to grant upon application an allowance of up to $1.50 per ton for processing scrap; and on June 30, 1944, the very day that the Act of 1944 became effective, the Schedule was revised to permit such a charge on all future sales of scrap. 9 Fed. Reg. 7330.

This brings us to the controlling legislation. The procedure established by the Emergency Price Control Act of 1942 authorized "any person subject to any provision" of a price schedule issued by the Administrator to "file a protest specifically setting forth objections to any such provisions," with a right of appeal to the Emergency Court of Appeals from denial of such protest by the Administrator. §§ 203(a) and 204(a), 56 Stat. 23, 31. But such protest had to be made "within a period of sixty days after the effective date" of a price schedule. By the Stabilization Act of June 30, 1944, 58 Stat. 632, 638, Congress amended the procedure so that a protest against any provision of a price schedule could be filed "at any time" after the effective date.

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[1] § 203(a) reads as follows: the bracketed material was deleted by the 1944 Amendment, the italicized material added by that Amendment: "[Within a period of sixty days] *At any time* after the issuance of any regulation or order under section 2, or in the case of a price schedule [within sixty days] *at any time* after the effective date thereof specified in section 206, any person subject to any provision of such regulation, order, or price schedule may, in accordance with regulations to be prescribed by the Administrator, file a protest specifically setting forth objections to any such provision and affidavits or other written evidence in support of such objections. [At any time after the expiration of such sixty days any persons subject to any provision of such regulation, order, or price schedule may file such a protest based solely on grounds arising after the expiration of such sixty days.]" 56 Stat. 23, 31; 58 Stat. 632, 638; 50 U. S. C. § 923(a).

If one had only the words of the 1944 amendment to go on, it would be dubious to infer that Congress had not only removed the bar of sixty days for protests to which the future may give rise but had also revised a right of protest which had expired through non-user under the Act of 1942. But such, it appears, is the meaning of the amendment. On this point the legislative history is decisive. A Senate report furnishes an authoritative gloss: "The committee was concerned . . . by the fact that in the early days of price control many people unfamiliar with the provisions of the act might have lost their right to challenge the basic validity of a regulation by excusable failure to file a protest within the statutory period. The committee therefore recommends that with respect to all regulations issued before July 1, 1944, a new period of sixty days from that date be provided for the filing of protests. . . ." S. Rep. No. 922, 78th Cong., 2d Sess. (1944) 10. It will be noted that the Senate proposed a reviver of barred claims for only sixty days. Even this limitation was removed when the measure was amended by the House and subsequently became law. See H. R. Rep. No. 1503, 78th Cong., 2d Sess. (1944) 5; H. R. Rep. 1698, 78th Cong., 2d Sess. (1944) 21.

Congress was evidently impressed by the need for relief of rights lost through what it deemed excusable failure to enforce them under the original Price Control Act. Since then, Congress lifted the sixty-day limitation retrospectively, we are relieved from considering whether, in the circumstances of this case, petitioner's right of protest would have been barred even under the 1942 Act so long as the controverted price schedule remained unmodified.[2] But this takes us only part of the way. We need still ascertain whether the 1944 amendment authorizes a protest without a time limit only against a price schedule contemporaneously active. Does it, that is, preclude a right of protest like petitioner's against a schedule that had been superseded,

[2] The Price Schedule in controversy was issued on February 21, 1942, 7 Fed. Reg. 1707, and the sixty days for protest, under the 1942 Act, expired on April 21, 1942. But it was not until April 25, 1942 that petitioner was notified by the O. P. A. that the schedule applied to its sales of fluxing scrap. Under the original Act, the sixty day limitation did not apply to "a protest based solely on grounds arising after the expiration of such sixty days." We need not decide whether petitioner could have brought itself under this escape clause. See *Gulbain Lobo Co.* v. *Henderson*, 132 F. 2d 150; *United States Gypsum Co.* v. *Brown*, 137 F. 2d 803; *R. F. Schanzer, Inc.* v. *Bowles*, 141 F. 2d 262; *Maclene Linens* v. *Bowles*, 144 F. 2d 874.

although it continues to govern the validity of transactions that occurred under its rule?

The Administrator argues that this restriction upon the enlargement of the right of protest made by the Act of 1944 is permanent in what Congress said. This is what Congress said: "At any time after the issuance of any regulation or order . . . or in the case of a price schedule, at any time after the effective date thereof . . . any person subject to any provision of such regulation, order, or price schedule may, in accordance with the regulations to be prescribed by the Administrator, file a protest . . . ." We find nothing in this language of the 1944 Amendment of § 203(a), or in its history, or in any illumination otherwise shed upon the terms of this legislation, to justify reading by qualification that Congress has left out.

All construction is the ascertainment of meaning. And literalness may strangle meaning. But in construing a definite procedural provision we do well to stick close to the text and not import argumentative qualifications from broad, unexpressed claims of policy. Insofar as such considerations are relevant here, however, they tell against cutting down the natural meaning of the language Congress chose.

Congress liberalized the right to challenge the validity of price regulations so extensively as it did, even reviving rights theretofore lapsed, because it felt, as we have seen, that rights were unfairly lost through unfamiliarity with the technical requirements of emergency legislation. Price-fixing is not static. It is a continuing process. The considerations of fairness that led Congress to give relief are the same whether a regulation was revoked or remained unchanged. There is not a hint that Congress intended to draw a line so artificial as the one the Administrator would have us draw.

This conclusion is left undisturbed by the arguments advanced on behalf of the Administrator. It is urged that he ought not to be burdened with issues arising under superseded regulations. But as a matter of law enforcement a regulation continues to survive its supersession as a contemporaneous price schedule. *United States* v. *Bark*, 320 U. S. 531. The Administrator has the duty of enforcing the Act, and in a proceeding for suspension of a license or for treble damages or penalties, it is immaterial that the basis of the suit is violation of a superseded price regulation. It